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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 264

THE UNITED STATES OF AMERICA, APPELLANT

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JULY 29, 1932

(36961)

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2 [Omitted.]

3 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 10067

UNITED STATES OF AMERICA, PETITIONER,

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, respondent.

Petition

Filed Oct. 3, 1930

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The United States of America, by its attorney for the Northern District of Illinois, acting for and under the direction of the Attorney General of the United States, at the request of the Interstate Commerce Commission of the United States, made under authority of section 12 (1) of the interstate commerce act, approved February 4, 1887 (24 Stat. L. 379), as amended (25 Stat. L. 855). (U. S. C., Tit. 49, § 12, par. 1), now comes and brings this proceeding by way of a petition for an injunction against the respondent, Chicago North Shore and Milwaukee Railroad Company, enjoining and restraining it from issuing any capital stock, bonds, or other evidence of indebtedness, collectively termed "securities," and/or from assuming any obligation or liability as guarantor, endorser, surety or otherwise, in respect of the securities of any other person, natural or artificial, unless and until it shall have first applied for and obtained from the Interstate Commerce Commission an order, pursuant to and as required by Section 20a of said Interstate Commerce Act (41 Stat. L. 494; U. S. C., Tit. 49, § 20a) authorizing the

4 issuance of such securities and/or the assumption of such obligation or liability.

And your petitioner respectfully shows and alleges:

I

Respondent is, and at all times herein mentioned was, a corporation chartered, organized and existing under and by virtue of the General Railroad Laws of the State of Illinois (chapter 114 of Cahill's 1921 Illinois Revised Statutes), and is, and at all times men-

tioned herein was, a resident and inhabitant of the State of Illinois, with its principal office in Chicago, in the Northern District of Illinois.

II

Respondent is, and at all times herein mentioned was, engaged in the interstate transportation of property and passengers for hire over lines of railroad owned, controlled, and operated by it, totalling, to wit, 133.05 miles, and extending from 63d Street in the South side of Chicago, Illinois, to 6th and Michigan Streets in Milwaukee, Wisconsin, with a branch line extending from Lake Bluff, Illinois, to Mundelein, Illinois; and was, and now is, a common carrier by railroad subject to the provisions of said interstate commerce act, including the provisions of said section 20a thereof.

III

At the time respondent was incorporated, under the General Railroad Laws of the State of Illinois, on, to wit, June 8, 1923, the line of railroad operated by it extended to and from the City of Chicago, in the State of Illinois, from and to the City of Milwaukee, in the State of Wisconsin, traversing the States of Illinois and Wisconsin.

IV

On, to wit, February 1, 1925, the line of railroad of the respondent included, in addition to the aforementioned line described in Paragraph III hereof, a line of railroad extending from a point of connection with the aforementioned line at Howard Street, in the city of Chicago, State of Illinois, to Dempster Street, in the town of Niles Center, State of Illinois; and on, to wit, June 5, 1926, the respondent's line of railroad included, in addition to the hereinbefore-described lines of railroad, a line of railroad extending from a point of connection with the aforementioned lines at Dempster Street, in Niles Center, Illinois, to Chicago Junction, Illinois.

V

At all times since its organization, and particularly since, to wit, June 8, 1923, the respondent has owned and operated, and now owns and operates, a railroad facility, and conducts a railroad common carrier business similar to those operated and conducted by railroads generally, and, in particular, similar to the facilities operated and the business conducted by paralleling and/or competing railroad common carriers in that, to wit:

(a) The motive power generally used by the respondent is electricity, but it is authorized by its charter to operate its trains by steam or other power, and respondent is using, and/or has used, steam locomotives in its operation.

(b) The tracks of the respondent are located on its private right of way, with the exception of short distances in a few municipalities, aggregating approximately three miles.

(c) Respondent has acquired part of its right of way through the exercise of the power of eminent domain.

(d) Respondent operates jointly with, and over trackage leased from, a railroad, to wit, the Chicago, Milwaukee, St. Paul & Pacific Railway Company, formerly the Chicago, Milwaukee & St. Paul Railway Company.

6 (e) The road bed of respondent's line of railroad was designed and built according to general railroad standards of construction, permitting the use of standard equipment used generally by railroads.

(f) The bridges on respondent's line of railroad are designed and built according to the standards of railroad construction.

(g) The tracks of the respondent's line of railroad are standard guage, and, with the exception of approximately one mile, its rails are of standard design, and are the same kind of rails as used on railroads generally, being laid and placed on the roadbed in conformance with the general practice obtaining on railroads in general.

(h) The signals, switches, and crossing-protection devices used on the respondent's line of railroad are similar to those used on railroads generally.

(i) The tracks of the respondent's line of railroad are physically connected with railroads by interchange tracks over which carload freight traffic can be, and is, interchanged without breaking bulk.

(j) The locomotives used on the respondent's line of railroad are similar to those used on railroads using same kind of motive power.

(k) Respondent owns and uses freight cars of the same design and construction as those used on railroads generally.

(l) Respondent uses standard freight cars with which it performs freight service substantially the same as that performed by railroads paralleling and/or competing with it.

(m) Respondent's yards and sidings are similar to those of railroads generally.

(n) Respondent's stations, depots, and shops are similar to those of railroads generally.

VI

The respondent has at all times since its organization, and particularly since, to wit, June 8, 1923, operated its railroad
7 property in accordance with the same methods of operations used by railroads in that, to wit:

(a) Its corporate organization is similar to that of railroads generally.

(b) Its operations are under the supervision of men who are experienced in common carrier railroad operation.

(c) It operates its trains under train rules substantially the same as the Standard Code of Train Rules of the American Railway

Association and under methods substantially the same as used by railroads generally.

(d) It hauls freight in standard freight cars owned by railroads.

(e) Its passenger-train service is operated under the same methods as those used by competing railroads.

(f) It provides passenger service similar to that provided by paralleling and/or competing railroads.

(g) Its track and roadbed are maintained in conformance with the methods and standards of railroads.

(h) Its practice in connection with the maintenance of its equipment and repairs thereto is substantially similar to the practice of railroads generally.

VII

Respondent is a member of associations of railroads generally, to wit:

(a) American Railway Association.

(b) Western Passenger Association.

(c) Central Freight Association.

(d) Bureau for the Safe Transportation of Explosives.

(e) Western Weighing & Inspection Bureau.

VIII

Respondent is a subscriber to rules entered into and promulgated for railroads generally, to wit:

8 (a) The Code of Car Service Rules.

(b) The Code of Per Diem Rules.

(c) The Car Service and Per Diem Rules Agreement of the American Railway Association.

(d) Master Car Builders Rules.

(e) The Interchange Agreement of the American Railway Association.

(f) The Official List of Open and Prepay Stations.

(g) The Consolidated Freight Classification.

IX

Respondent files freight and passenger tariffs with the Interstate Commerce Commission and the bulk of its revenue is derived from rates and fares subject to the jurisdiction of and regulated by the Interstate Commerce Commission.

X

Respondent solicits and handles its traffic as do railroad common carriers generally, in that, to wit:

(a) It has an extensive traffic organization.

(b) By advertisements and personal solicitation through its traffic representatives, respondent competes for freight and passenger traffic

with other railroad common carriers generally, and particularly with those common carriers whose railroad lines are located in and serve the general territory served by respondent's lines.

(c) It performs express, freight, and passenger service.

(d) It interchanges carload and less-than-carload freight in interstate commerce with railroads.

(e) Its freight rates are subject to the jurisdiction of the Interstate Commerce Commission.

(f) Its passenger rates are regulated by and are subject to the jurisdiction of the Interstate Commerce Commission.

9 (g) It exchanges passes with railroads.

(h) Its freight tonnage is and has been handled largely in carload shipments.

(i) Its bills of lading, waybills, and interline waybills are the same as those used on railroads generally.

XI

At all times herein mentioned respondent was, and now is, a corporation organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act within the meaning of that term as used in section 20a of the interstate commerce act. (41 Stat. L. 494, U. S. C., Tit. 49, sec. 20a.)

XII

Respondent has, since one hundred twenty (120) days after February 28, 1920, to wit, between June 20, 1923, and July 1, 1930, without first having obtained authority from the Interstate Commerce Commission as required by section 20a of the interstate commerce act, issued shares of its capital stock, bonds, and other evidence of indebtedness, collectively termed "securities," totaling more than forty-two million dollars ($42,000,000) to wit:

Capital stock:	
Common—50,000 shares, par value $100	$5,000,000.00
Preferred—6% noncumulative	7,542,200.00
7% cumulative prior line	7,940,400.00
Bonds:	
First Mortgage gold bonds—5%	4,000,000.00
First and refunding mortgage gold bonds 6%	9,460,700.00
" " " " " " 5½%	2,482,000.00
Notes:	
Three-year gold notes	4,500,000.00
Equipment trust certificates	1,543,900.00
Unsecured 5-year noninterest-bearing notes	142,008.07
	42,611,208.07

XIII

10 Respondent has, since one hundred twenty (120) days after February 28, 1920, to wit, between June 20, 1923, and July 1, 1930, without having first obtained authority from the Interstate Commerce Commission as required by section 20a of the

interstate commerce act, assumed an obligation or liability as guarantor, surety, or otherwise, in respect of the securities of the Skokie Valley Realty Association, in that it has guaranteed a loan of that association in the amount of, to wit, one million six hundred ninety thousand dollars ($1,690,000).

XIV

Respondent has, since one hundred twenty (120) days after February 28, 1920, to wit, between June 20, 1923, and July 1, 1930, without first having obtained authority from the Interstate Commerce Commission as required by section 20a of the interstate commerce act, assumed an obligation or liability as guarantor, surety, or otherwise, in respect of the securities of the North Shore Material Company, in that it has guaranteed the outstanding first mortgage bonds of that company amounting to, to wit, two hundred ninety-five thousand five hundred dollars ($295,000), maturing serially from 1930 to 1936.

XV

Petitioner is informed and believes, and so believing alleges, that respondent is formulating a plan under and by which it proposes and intends to issue other securities without first obtaining authority so to do from the Interstate Commerce Commission as required by section 20a of said interstate commerce act.

XVI

That said acts of respondent, described in preceding paragraphs numbered XII, XIII, XIV, and XV were, are, and will be contrary to the provisions of said section 20a of said act, and are subject to be enjoined by this court, at the suit of the petitioner under the provisions of paragraph (1) of section 12 of said interstate
11 commerce act; and that, unless enjoined and restrained by this court, respondent intends to, and will, continue to issue its securities without obtaining authority from the Interstate Commerce Commission so to do, in violation of said section 20a of said act.

PRAYER

Wherefore, your petitioner prays:

1. That a writ of subpœna issue against the respondent requiring it, on or before a date to be specified therein, to appear before this honorable court, and then and there to make answer to this petition.

2. That the respondent be permanently enjoined and restrained from issuing any capital stock, bonds, or other evidence of indebtedness, collectively termed "securities," and from assuming any obligation or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, unless and until there shall first have been obtained from the Inter-

state Commerce Commission an order authorizing the issuance of such securities or the assumption of such obligation or liability.

3. That petitioner have such other and further relief as to the court may seem meet and as justice and equity may require.

GEORGE E. Q. JOHNSON,
United States Attorney.

WILLIAM D. MITCHELL,
Attorney General.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

12 [*Duly sworn to by Elmer B. Collins and George E. Q. Johnson; jurats omitted in printing.*]

13 [Omitted.]

14 In United States District Court

[Title omitted.]

Stipulation reextension of time

Filed Oct. 21, 1930

It is nonow and hereby stipulated by and between the parties herein, by their respective solicitors, that the time within which the defendant may answer or otherwise defend in the above-entitled cause be extended and that the said defendant may have until and on the 4th day of November, 1930, in which to answer or otherwise defend against the bill in equity filed in this cause.

GEORGE E. Q. JOHNSON,
U. S. Atty.

Solicitors for the United States of America.
RALPH R. BRADLEY,
Solicitor for Chicago North Shore and Milwaukee Railroad Company.

15 In United States District Court

[Title omitted.]

Order extending time

Oct. 21, 1930

Upon the presentation of the stipulation of the parties to the above-entitled cause, by their respective solicitors, it is now and hereby ordered that the time within which the defendant, Chicago

North Shore and Milwaukee Railroad Company, is required to answer or otherwise defend against the bill of complaint filed herein is now and hereby extended, and that said defendant may and shall have until and on the 4th day of November, 1930 in which to answer or otherwise defend against the bill of complaint filed herein.

CHARLES E. WOODWARD,
Judge.

16 In United States District Court

[Title omitted.]

Answer of Chicago North Shore and Milwaukee Railroad Company, defendant, to the bill of complaint of United States of America, complainant

Filed Nov. 3, 1930

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is or are material or necessary for it to make answer unto, answering says:

I

As to Paragraph I of the bill of complaint herein, this defendant, further answering, admits that it is a corporation, and that the predecessor corporations owning and operating subsequent to
17 March 1, 1920, the properties now owned and operated by the defendant were corporations, chartered, organized, and existing under and by virtue of the statutes of the State of Illinois sometimes described as the General Railroad Laws of the State of Illinois, and more particularly described as "An act to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized; and authorizing the same and all railroad companies of this State to own and hold the stock and securities of railroad companies of other States owning a connecting line."

This defendant, further answering, states that the above-described statute is the only one available under the statutory law of the State of Illinois for the organization of a carrier by rail operating or seeking to operate railway properties other than urban street railways.

II

As to Paragraph II of the bill of complaint herein, this defendant, further answering, admits that at all times since March 1, 1920, this defendant was, and the predecessor corporations owning the prop-

erties now owned and operated by defendant were (except the Chicago North Shore and Northern Railroad hereinafter mentioned), engaged in the interstate transportation of property and passengers for hire over the lines of railroad owned, controlled, and operated by them, but this defendant says that its total miles of road owned are 113.62 and its total miles of road leased are 24.80, and that the operations of the defendant over owned and leased lines extend from 63rd Street on the South Side of Chicago, Illinois, to Second Street and Grand Avenue, in the city of Milwaukee, Wisconsin, with
18 a branch line extending from Lake Bluff, Illinois, to Mundelein, Illinois; and this defendant admits that it now is a common carrier by railroad, and it further admits that it is subject to certain of the provisions of the interstate commerce act, approved February 4, 1887, and is excluded from other provisions of said act; and this defendant particularly denies that it is, or any of its predecessors in ownership were, included within the provisions of section 20a of said interstate commerce act; and this defendant, further answering, states that it is excluded from the provisions of said section 20a in that the defendant is now, and each predecessor company at all times since March 1, 1920, has been, an interurban electric railway not operated as a part of a general steam railroad system of transportation, and that this defendant intends to continue as a common carrier by interurban electric railway not operated as a part of a general steam railroad system of transportation.

III

As to Paragraph III of the bill of complaint herein, the defendant answering denies that it was incorporated as alleged in said paragraph of said bill of complaint, but the defendant states the facts as to its organization and the organization of the predecessor owners of such property are as follows:

That its predecessor, Chicago North Shore and Milwaukee Railroad, a corporation organized under the railroad laws of the State of Illinois hereinbefore described, was incorporated on the 6th day of June, 1916, and operated the lines of railway now operated by the respondent as they then existed; that a corporation known as Chicago North Shore and Milwaukee Railroad Company was incorporated at the instance, and in the sole interest of, all of the stock-
19 holders of said first above-named corporation, on the 8th day of June, 1923, under the said aforedescribed railroad laws of the State of Illinois, and which corporation acquired all of the properties of the predecessor, Chicago North Shore and Milwaukee Railroad, on June 29, 1923; that on October 6, 1924, said Chicago North Shore and Milwaukee Railroad Company was consolidated, under the statutes of the State of Illinois in such case made and provided, with Chicago North Shore and Northern Railroad, into the present defendant corporation, Chicago North Shore and Milwaukee Railroad Company; defendant, further answering, states that said Chicago North Shore and Northern Railroad was incor-

porated and organized with termini in the State of Illinois for the purpose of doing only an intrastate business, and was not organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act; defendant, further answering, admits that its present line of railroad extends to and from the city of Chicago, in the State of Illinois, from and to the city of Milwaukee, in the State of Wisconsin, traversing the States of Illinois and Wisconsin.

IV

As to Paragraph IV of said bill of complaint herein, the defendant, further answering, admits that on February 1, 1925, the line of railroad of the defendant included, in addition to the line described in Paragraph III of the bill of complaint, a line of railroad extending from a point of connection with the aforementioned line at Howard Street, in the city of Chicago, State of Illinois, to Dempster
20 Street, in the town of Niles Center, Illinois; and on, to wit, June 5, 1926, the respondent's line of railroad included, in addition to the hereinbefore-described lines of railroad, a line of railroad extending from a point of connection with the aforementioned lines at Dempster Street, in Niles Center, Illinois, to North Chicago Junction, Illinois, but defendant states that said line of railroad from said point of connection at Howard Street in the city of Chicago to North Chicago Junction, Illinois, was the line of railroad authorized by, and constructed pursuant to, the charter of said Chicago North Shore and Northern Railroad.

V

As to Paragraph V of said bill of complaint herein, this defendant denies that since its organization, and particularly since June 8, 1923, it has owned and operated, and now owns and operates, a railroad facility and conducts a railroad common carrier business similar to those operated and conducted by railroads generally, and in particular similar to the facilities operated and the business conducted by paralleling and/or competing railroad carriers, as alleged in said Paragraph V.

And the defendant, further answering as to subparagraph (a) of Paragraph V of the bill of complaint, admits that the motive power used by the respondent is electricity, and admits that it is authorized by its charter to operate its trains by steam or other power, but defendant denies that it is now using or ever has used steam locomotives in the operation of its properties, and states that it is prevented by franchise and ordinance provisions from operating its
21 trains and cars by steam locomotives in all the municipalities into and through which it operates in the State of Illinois and in the State of Wisconsin; defendant further states that its municipal rights to its terminal operations into and in the city of Milwaukee, Wisconsin, are based upon its being an interurban

electric railway and limited to the operation by a carrier of that class.

And the defendant, answering as to subparagraph (b) of Paragraph V of the bill of complaint, denies that its tracks are located on its private right of way, with the exception of short distances in a few municipalities aggregating approximately three (3) miles, and the defendant states the fact to be that all of its operations into and in the city of Chicago, Illinois, on trackage aproximating twenty-two (22) miles in length, is on the tracks of the Chicago Rapid Transit Company, owning and operating the intramural elevated railroad system in the city of Chicago, save a joint operation with said Chicago Rapid Transit Company over a right of way owned by Chicago, Milwaukee, St. Paul & Pacific Railway from Linden Avenue, Wilmette, to Wilson Avenue, Chicago, a distance of about eight (8) miles; and defendant, further answering, states that its entire operation into the city of Milwaukee, Wisconsin, is over street railway tracks with a mileage of about three (3) miles, and which operation is on the surface of the street in conjunction with street railway cars and other vehicular traffic; and the defendant further states that it has street operation on the surface in common with other vehicular traffic in the village of Wilmette, Illinois, the village of Kenilworth, Illinois, the village of Winnetka, Illinois, the village of Glencoe, Illinois, and the city of Highland Park, Illinois, and in the city of Waukegan, Illinois; defendant further alleges that it operates an intramural surface line
22 street car service in the city of Milwaukee, Wisconsin, in conjunction with its interurban operations and on the same tracks, that it operates an intramural street car service in the city of Waukegan part of which operation is in common with its interurban service, and that from the city of Waukegan to and into the city of Chicago it operates a quasi-street car service, stopping practically at every street intersection, in and through the municipalities of North Chicago, Lake Bluff, Lake Forest, Highwood, Highland Park, Glencoe, Hubbard Woods, Winnetka, Kenilworth, and Wilmette, all in common with its interurban service.

And the defendant, further answering, as to subparagraph (c) of Paragraph V of the bill of complaint, admits that it or its predecessor companies have acquired part of its right of way through the exercise of the power of eminent domain.

And the defendant, further answering, as to subparagraph (d) of Paragraph V of the bill of complaint, denies that it operates jointly with and over trackage leased from the Chicago, Milwaukee, St. Paul & Pacific Railway Company, as alleged, but states the fact to be that all of the passenger service over the trackage of said Chicago, Milwaukee, St. Paul & Pacific Railway Company mentioned is conducted, under intercorporate contracts approved by the Illinois Commerce Commission, by said Chicago Rapid Transit Company operating the intramural elevated transportation in the city of Chicago, and the defendant; that the only right of the Chicago,

Milwaukee, St. Paul & Pacific Railway Company over said leased line is the right to switch freight cars into and out of such leased trackage, and which switching is done under such intercorporate agreements by said Chicago Rapid Transit Company on separate industrial tracks, and not by the defendant.

23 And the defendant, further answering, as to subparagraph (e) of Paragraph V of the bill of complaint, denies that its roadbed was designed and built according to general railroad standards of construction permitting the use of standard equipment used generally by railroads.

Further answering, defendant denies the allegations contained in subparagraph (f) of Paragraph V.

As to the allegations of subparagraph (g) of said Paragraph V, the defendant admits that its line of railroad is standard guage, but denies that, with the exception of approximately one mile, its rails are of standard design, but defendant admits that its rails generally are "Tee" rails which are used on railroads generally, including interurban electric railroads and many street railroads.

Further answering as to subparagraph (h) of Paragraph V, defendant admits that some of its signals, switches, and crossing-protection devices are similar to those used on railroads generally, including interurban electric railroads, suburban electric railroads, and street railroads.

Further answering as to subparagraph (i) of Paragraph V of the bill of complaint, defendant says that at several points its tracks are physically connected with other railroads by interchange track, over which carload freight traffic can be and is interchanged without breaking bulk.

As to subparagraph (j) of Paragraph V of the bill of complaint, the defendant says that it has and uses seven electric locomotives, consisting of five straight electric and two electric and storage battery combined, which are of the type ordinarily used on electric interurban railways, but are lighter and of less power than similar locomotives used on electrified sections of trunk-line steam railroads.

24 Answering as to subparagraph (k) of Paragraph V of the bill of complaint, defendant says that it owns and uses in revenue haul approximately five box freight cars, twenty-two flat cars, and eighty-eight gondola cars, of standard design and construction, but that standard M. C. B. steam railroad freight equipment is barred from use upon a large trackage on the line of railroad of the defendant by reason of franchise and ordinance restrictions, sharp curves, want of clearance in bridges, subways, and culverts, and because of other operating disabilities common to interurban electric railways.

Defendant, further answering, states that the consignment of the freight equipment owned by it beyond its own line is negligible in amount, that said twenty-two flat cars are used almost entirely for

company purposes, and further, that defendant is prevented by legal restrictions and operating and contractual conditions and inhibitions from hauling any standard freight equipment into either its southern terminal, the city of Chicago, Illinois, or its northern terminal, the city of Milwaukee, Wisconsin.

Further answering as to subparagraph (1) of Paragraph V of the bill of complaint, defendant denies the allegations thereof and likewise denies the allegations of subparagraph (m) and subparagraph (n) in said Paragraph V.

VI

Further answering Paragraph VI of the bill of complaint, the defendant denies each and every allegation therein made, save that it admits and states that it is enabled to and does haul standard freight cars to a limited extent, and only in a manner and to the extent characteristic of interurban electric railways.

25

VII

As to Paragraph VII of the bill of complaint herein, the defendant denies that it is a member of the American Railway Association, but states the fact to be that it is an associate member of said American Railway Association under and pursuant to a by-law adopted by that association authorizing the board of directors thereof to admit to the association as associate members carriers which, in the judgment of the board, are not eligible for membership; defendant admits that it is a member of the Western Passenger Association, the Bureau for the Safe Transportation of Explosives, and the Western Weighing and Inspection Bureau, but denies that it is a member of the Central Freight Association.

VIII

As to Paragraph VIII of the bill of complaint, the defendant answering admits that it is a subscriber to the rules entered into and promulgated as described in said Paragraph VIII, but defendant states the fact to be that an interurban electric railway having any interchange of standard freight equipment at all with steam railroad trunk lines is obliged to be a subscriber to such rules.

IX

As to Paragraph IX of the bill of complaint, defendant admits that it files freight and passenger tariffs with the Interstate Commerce Commission, and admits that more than fifty per cent of its gross operating revenues is derived from rates and fares subject to the jurisdiction of and regulated by the Interstate Commerce Commission, but defendant states the fact to be that for the calendar year 1929 less than twenty-four per cent of its gross transpor-

26 tation revenues was received from the transportation of freight of all kinds, and that less than nine per cent of its gross transportation revenues was received from carload freight both interchanged with other carriers and originating and delivered on the line of defendant; that the defendant's revenues for said year derived from carload freight was less than thirty-nine per cent of its revenue derived from both carload and less-than-carload freight.

X

As to the allegations of Paragraph X, the defendant, further answering, denies that it solicits and handles its traffic as do railroad common carriers generally, and further answering as to subparagraph (a) admits that it has a traffic organization, but denies that it is an extensive one, and admits that it does business substantially as set forth in subparagraphs (b), (c), (d), (e), (f), (g), (h), and (i), but states that its operations and practices in this regard are typical of those of the interurban electric railways of the United States, and that its said operations and practices are all carried on by the defendant as an interurban electric railway.

XI

As to the allegations of Paragraph XI of the bill of complaint, the defendant, further answering, denies that it was and now is a corporation organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act within the meaning of that term as used in section 20a of the interstate commerce act. (41 Stat. L. 494, U. S. C., Tit. 49, Sec. 20a.)

27 XII

As to Paragraph XII of the bill of complaint, the defendant answering admits that it has issued securities substantially as alleged in said Paragraph XII without the approval of the Interstate Commerce Commission, but this defendant denies that it was or is required by section 20a of the interstate commerce act to obtain such approval from said commission, because the defendant alleges and states that it now is, always has been, and its predecessor was, an interurban electric railroad, not operated as a part of a general steam railroad system of transportation, and comes within the parenthetical exception in section 20a of the interstate commerce act which excludes from the provisions thereof an interurban electric railway which is not operated as a part of a general steam railroad system of transportation, and defendant further alleges that the securities issued by it were issued after it acquired and after it began the operation of the properties as an interurban electric railroad. Defendant further states that all of said securities were issued upon the due and proper authority of the Illinois Commerce Commission and the Railroad Commission of Wisconsin, the regulatory bodies having jurisdiction in the premises.

XIII

As to the allegations of Paragraph XIII of the bill of complaint, the defendant admits the allegations therein contained, except that it denies that it was required by section 20a of the interstate commerce act to obtain the authority so to do from the Interstate Commerce Commission for the reason hereinbefore given in this answer.

28

XIV

As to Paragraph XIV of the bill of complaint, the defendant admits the allegations therein contained, save that it denies that it was required by section 20a of the interstate commerce act to obtain authority so to do from the Interstate Commerce Commission for the reasons hereinbefore given in this answer.

XV

As to the allegations of Paragraph XV of the bill of complaint, the defendant states that it is not required by section 20a of the interstate commerce act or any other law of the United States to obtain the consent of the Interstate Commerce Commission to issue its securities, all for the reasons hereinbefore given in this answer.

XVI

As to Paragraph XVI of the bill of complaint, the defendant answering denies that the acts described in Paragraphs XII, XIII, XIV, and XV were, are, and will be contrary to the provisions of said section 20a of said interstate commerce act, and denies that the same are subject to be enjoined by this court at the suit of the petitioner under the provisions of paragraph 1 of section 12 of said interstate commerce act; and further answering, defendant says that for the reasons hereinbefore given it is not required to obtain consent to the issue of its securities from said Interstate Commerce Commission, and on the other hand is required to obtain the consent of said Illinois Comerce Commission and said Railroad Commission of Wisconsin.

29 Wherefore, having fully answered, defendant prays that the application for an injunction be denied, and that the bill of complaint be dismissed, and for such other and further order as may be appropriate.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY,
By CHARLES E. THOMPSON, *Vice President.*
RALPH R. BRADLEY,
ADDISON L. GARDNER,
FREDERICK E. STOUT,
Solicitors for Defendant.
ROBERT E. QUIRK,
Of Counsel

30 [Duly sworn to by Charles E. Thompson; jurat omitted in printing.]

31 In United States District Court

[Title omitted.]

Stipulation as to narrative statement of evidence and order thereon

Filed July 26, 1932

It is hereby stipulated and agreed by the parties to this cause, acting by their respective counsel, for the purpose of settling the record for the appeal to the Supreme Court of the United States, that:

1. The attached statement of evidence, consisting of 16 typewritten pages of oral evidence in narrative form, and petitioner's Exhibits Nos. 1, 2, 3, 6, 7, 8, 12, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 33, 36, 39, and 46, and respondent's Exhibits Nos. 6, 22, and 26, is a true and correct transcript of that part of the oral and documentary testimony introduced at the trial of this cause, and, in connection with and addition to the facts found by the court, deemed necessary, for the determination of this appeal, as the same is contained in the official typewritten transcript in said District Court.

32 2. The attached statement of evidence shall be substituted for the original transcript, shall be incorporated in the record on appeal, and shall have the same force and effect upon the appeal as the original testimony.

3. Petitioner's Exhibits Nos. 1, 12, and 46, and respondent's Exhibit No. 26, consisting of a map of respondent's railroad line, numerous photographs of respondent's tracks, stations, and other facilities, and a series of respondent's advertisements of its service to the public, and being impracticable of reproduction and printing in the printed record on appeal, shall be transmitted by the clerk of this court in original form as part of the record on appeal, with this stipulation.

GEORGE E. Q. JOHNSON,
United States Attorney,
JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
Solicitors for United States of America, Petitioner.
RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore & Milwaukee Railroad Company, Respondent.

JULY 22, 1932.

Order

It is ordered that the within and attached stipulation and statement of evidence be and the same are hereby approved, and
33 that in preparing, certifying, and transmitting the transcript of record to the Supreme Court of the United States the clerk is directed to proceed in accordance therewith.

CHARLES E. WOODWARD,
United States District Judge.

34 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 10067

UNITED STATES OF AMERICA, PETITIONER

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, respondent

Narrative statement of evidence

Filed July 26, 1932

In the trial of the above-entitled cause, upon the petition of United States of America, petitioner, for a permanent injunction, and respondent's answer to said petition, which trial was had May 25, 1931, to June 3, 1931, before the honorable Charles E. Woodward, one of the judges of said court, sitting in equity without a jury, the evidence taken, so far as the same is pertinent to the issues presented upon an appeal herein now pending to the Supreme Court of the United States, was in substance as follows:

[File endorsement omitted.]

35 ALBERT S. RICHEY was called as a witness on behalf of respondent, and, being duly sworn, testified as follows:

The first commercially successful electric street railway in the United States started operation in Richmond, Virginia, in February, 1888. Between 1890 and 1894 there was a rapid development of electric street railways. Such lines were in operation at Chicago, Cleveland, Toronto, Indianapolis, and elsewhere at that time. The interurban electric railway evolved and developed from the electric street railway. (Tr. 224, 227.)

In the evolution and development of electric railways there came to be known different types and classifications of such railways with different names and designations. These names and designations are urban street railways, including both surface lines and rapid transit lines, suburban electric lines, interurban electric railways, and, in more recent years, electrified sections of steam railroads. (Tr. 226–227.)

B. J. FALLON was called as a witness on behalf of the respondent, and, being duly sworn, testified as follows:

The respondent is not a steam railroad. It is not owned by a steam railroad. It is not operated as a part of any steam railroad system. It is not an electrified section of a steam
36 railroad. The respondent is an electric railroad. It performs a street-car service, a suburban service, and an interurban service. There are only four kinds or classes of electric railways, namely, urban, suburban, interurban, and electrified sections of steam railroads. There is not now and never has been any other kind of an electric railway. (Tr. 430–433.)

The property of the predecessor respondent was not under Federal control and operation during the war. (Tr. 373.)

Whereupon respondent offered in evidence Exhibit 26, consisting of 84 photographs.

That the first photograph of Exhibit 26 is of a main-line train rounding a 95 degree radius curve at Wells and Van Buren Street, Chicago. The rounded ends of the cars may be seen, as well as the absence of vestibules and the alignment on the tracks at one end of each car and the trolley poles pulled down to the tops of the cars (Tr. 394); the second photograph is of main-line tracks and overhead trolley-wire construction of respondent leaving Greenleaf Avenue, a paved street in Wilmette (Tr. 395). Mr. Fallon stated that page 4 of Exhibit 26 shows the gauntlet track over Dodge Avenue at Niles Center; that this gauntlet is necessary to permit the freight car shown in the picture to clear the sides of the bridge and the third rail adjacent thereto; that this type of gauntlet track is typical of gauntlets used by respondent for clearance purposes (Tr. 396); that the operation over the gauntlet tracks requires trains to stop at a switch where the gauntlet leads off the main running rails; that a brakeman proceeds ahead and opens the switch;
37 that the train then passes on to the gauntlet tracks through the station or past the other clearance restrictions, after which the switch is closed behind the train; that another switch is open in front of the train which permits the train to pass back to the regular main-line running rails; that this kind of operation over gauntleted tracks is unknown on steam railroads (Tr. 256).

Page 11 of Exhibit 26 is of the main-line tracks of respondent through Glencoe. It also shows the track location and topography of respondent's lines, as well as the line of the Chicago and Northwestern Railway, which parallels respondent's line at this point. The photograph shows that respondent's line is distinctly different from the line of the Chicago and Northwestern.

Pages 15, 16, and 17 of Exhibit 26 show how respondent's line follows the contour of the ground, the open platforms, and the trolley-wire suspension.

Page 20 of Exhibit 26 is a photograph of a station of respondent in the store building across the paved street from the tracks.

Page 22 of this exhibit shows respondent's tracks on St. Johns Avenue in Highland Park. The tracks are in paved streets part of the distance and in an open part of the street with the paving adjacent thereto the remainder of the distance. The tracks follow the contour of the ground. On the right of the photograph is the pretentious station of the Chicago and Northwestern.

38 The remaining photographs in Exhibit 26 depict various physical conditions on the line of respondent.

Of the respondent's total owned tracks, 6.58 route miles are laid in paved streets; 0.197 route miles are laid in unpaved portions of city streets; 2.877 route miles are laid in unpaved street area, the track zone not being used for street purposes. In Milwaukee respondent's passenger trains and merchandise dispatch trains move over 2.625 route miles of the track in city streets. These tracks are owned and used for street-railway service by the Chicago and Milwaukee Electric Railway Company, which, in turn, is owned by the respondent. In Waukegan respondent owns and operates the city street-car service. Respondent owns and operates 7.43 route miles of track in Waukegan used in city street-car service, of which 3.29 miles are also used in interurban operation. (Deft. Exhibit 6.) (Tr. 252.)

Respondent owns its right of way from Wilmette to Milwaukee except for 6 miles of track in a few municipalities through which it runs on public thoroughfares. It owns all of the right of way of the Skokie Valley line. From Waukegan north to Milwaukee the right of way of respondent averages about 100 feet in width. South from North Chicago to the tracks of the Chicago Rapid Transit Company the right of way averages in width from 25 to 100 feet, the greater part being about 50 feet.

Respondent's bridges are built according to steam railway specifications and standards, and with the aid and by means of

39 gauntlet tracks in some instances to permit clearances, are suitable for the operation of standard freight cars of steam railroads. The bridges on the Shore Line route between Chicago and North Chicago Junction, which is mainly a passenger line, are built according to Cooper's E 30 specifications. Neither the viaduct used by respondent in entering Milwaukee nor the elevated structure used by respondent in Chicago will support steam railroad trains. (Tr. 280.) The bridges on the Shore Line between Chicago and North Chicago Junction will support two locomotives weighing 106 tons each and a load of 3,000 pounds per lineal foot.

The grades on the Shore Line of the respondent generally follow the topography of the ground, being less than 0.4 of 1 per cent on most of the tracks. Some parts of the roadbed of the Shore Line

are suitable for the operation of standard steam freight cars; other parts are not suitable for such operation. (Tr. 298–371.) Respondent's signals, switches, and crossing-protection devices, except in special cases, are similar to those used by steam railways. Parts of respondent's line are equipped with a modern railroad block signal system. On 22.73 per cent of main line route miles respondent cannot handle steam railroad equipment. (Tr. 372.) A regular train of either the Chicago and Northwestern or the Chicago, Milwaukee, St. Paul and Pacific could not be operated over the Shore Line between Chicago and Milwaukee. (Tr. 429.) Respondent does not operate any freight trains south of East Prairie road on the Skokie Valley line. Starting at 63d and Dorchester Avenue on the south side of Chicago, respondent performs no freight
40 service for any industry or team track until it reaches McCormick Boulevard on the Skokie Valley line, 15 miles north of the Loop district in Chicago. From that point north until the line of respondent reaches Harrison Street in Milwaukee, freight service is performed for industries and to sidings. Harrison Street is near the south limits of Milwaukee. The first freight siding on the Shore Line is near the south end of Highland Park, about 24 miles north from the Loop district in Chicago. (Tr. 442.)

The respondent maintains on its entire system of railroad 224 stations or stopping points at which it receives and discharges passengers. At 51 of these stations there is a station agent who sells passenger tickets and performs other duties customarily performed by station agents. At 96 of these points the respondent maintains shelters and platforms. At 35 of these points the respondent maintains platforms only. At 42 points certain of the respondent's trains stop at streets or highways, where no facilities or platforms are provided. At many of the stations there are no facilities for handling freight. (Deft. Exhibit 12.) All passenger stations within Chicago are owned by the Chicago Rapid Transit Company and are used by respondent in common with that company. No freight business is handled at any of these stations.

On the tracks of the Chicago Rapid Transit Company in Chicago and on the tracks owned but not used by the Chicago, Milwaukee, St. Paul and Pacific Railroad for about two miles between Howard Street in Chicago and Crawford Avenue in Niles Center, the
41 current is fed by the third-rail system. For a distance north of Howard Street on the tracks of the Chicago, Milwaukee, St. Paul and Pacific a gauntlet track is maintained and the current is fed through over an overhead trolley. The overhead trolley and the gauntlet track are necessary to enable the Chicago Rapid Transit Company to switch certain freight cars for the Chicago, Milwaukee, St. Paul and Pacific Railroad.

During the period of the construction of the Skokie Valley line and for a short time thereafter, respondent owned and used twelve steam

locomotives in the construction of that line and, after its completion, these locomotives were used by respondent in commercial freight business for a short period of time and then were sold. (Tr. 392–393.) Respondent does not now own or use any steam locomotives. Respondent owns two refrigerator cars which are similar to the merchandise dispatch cars. These refrigerator cars are used exclusively for cooling and storing perishable freight. They are not used to transport freight. Respondent's rolling equipment includes a number of ferry trucks or containers which are used to haul freight from the shipper to the respondent's depots by tractors and are then mounted on specially built flat cars to which they are fastened and are transported in that manner between Chicago and Milwaukee and between Chicago and Racine. There ferry trucks, or containers, are used for the same purpose as the container maintained by the Chicago and Northwestern Railway, but the character of the ferry trucks and the manner of handling them by the respondent are different from the container of the Chicago and Northwestern and its manner of handling such containers.

42 The track on the elevated system in Chicago from 63d and Dorchester to Leland Avenue is built on an elevated structure. All this track is third-rail-type transmission and also is a gauntlet track the entire distance. The gauntlet track is installed and used to throw freight equipment away from the third rail. These freight trains are operated only at night when there are long intervals between passenger trains, and in order to operate over these gauntlet tracks it is necessary for a brakeman to throw the switch at each end of the gauntlet. (Tr. 253–257.)

Merchandise dispatch cars are used for handling less-than-carload shipments between most of the stations on respondent's line. (Tr. 341.) Merchandise dispatch is handled in trains of one or more cars, usually a maximum of five cars. Most of the merchandise cars can be operated over the elevated structure in Chicago. A large portion of the operation in Chicago is from respondent's Montrose Avenue merchandise dispatch station located at Montrose Avenue and the Chicago Rapid Transit Company's right of way just west of Broadway, about six miles north of the Loop.

Respondent operates its merchandise dispatch cars handling l. c. l. freight all the way across the city of Chicago over the elevated tracks and has a station for receiving and delivering such freight at 63d and Calumet Avenue, at the south end of the elevated system. (Tr. 341–342.) Its main merchandise receiving station is at Franklin and Austin Streets, just outside the Loop. In addition to that

43 station it has two other receiving stations for merchandise freight, one at Polk and Racine and one at 41st and Union Avenue. (Tr. 343.)

Respondent's standard passenger fares are 3.6 cents per mile, the same as the standard fare generally in effect on steam railroads.

The commutation fares of respondent are higher than the commutation fares of the Chicago and Northwestern. The respondent and the Chicago and Northwestern are in direct competition with each other in their through passenger service, their limited service to Waukegan, and their suburban and commuters service. Respondent also competes with busses and boat lines.

Respondent operates its trains under train rules adapted to its requirements. (Deft. Exhibit 19.) Some of these rules are substantially similar to the standard code of train rules of the American Railway Association, under which steam railroads operate. In its operation over the elevated loop tracks of the Chicago Rapid Transit Company in Chicago, respondent is governed by the rules of the Rapid Transit Company. (Deft. Exhibit 18.) Respondent operates its trains under train orders, clearance cards, meet orders, changes in orders, and under certain other rules as to superior and inferior trains, which are similar to the rules followed by steam railroads. But respondent's operating rules are different in many substantial respects from the standard code of train rules of the American Railway Association. Respondent's code of train rules caution motormen to exercise great care when a vehicle is being drawn ahead of or alongside of the train. Motormen and
44 conductors must see to it that all cars are equipped with destination signs, which must be displayed. Respondent does not use symbols in employees' time tables such as are used by steam railroads. Respondent does not use any through communicating single appliances from car to car in operating trains such as are provided for in the standard code of rules governing steam railroads.

The respondent has certain standards of construction and of maintenance that are adaptable to certain divisions and certain sections of divisions of its line. Respondent has standards as to the weight of rail on certain divisions, which weight is adhered to in replacements and renewals. There is no such thing as a standard roadbed construction. The only thing that is standard about roadbed construction is in the gauge. There are still some narrow-gauge railroads. The standard of roadbed construction varies considerably on different parts of the same railroad and the construction on different railroads is in many respects different. (Tr. 273–274.)

Respondent's tracks entering its shops come out of the highway around very sharp curves and short switches. Neither a steam locomotive nor a steam railroad passenger car could be handled around these curves. (Tr. 328–330.)

In its operation over and through city streets respondent is required to observe the municipal traffic regulations, such as stop and go signals at street intersections and at other points. (Tr. 362–365.)

B. J. Fallon, a witness called on behalf of the respondent, further testified as follows on the cross-examination:

That the 31.47 miles of track shown on respondent's Exhibit 22 as route mileage on which it is impossible to handle freight
45 on account of franchise and clearance restrictions constitutes 22.73 per cent of respondent's total route mileage (Tr. 371–373), but includes 16.9 miles of track of the Chicago Rapid Transit Company and 3.3 miles of track of the Chicago Milwaukee Electric Railway Company in Milwaukee; and that the remaining mileage affected by franchise and clearance restrictions as shown on Deft.'s Exhibit 22 is located on respondent's "Shore Line" between Linden Avenue in Wilmette and the south city limits in Highland Park (Tr. 436–439).

That defendant operates its fast limited train service between Chicago and Milwaukee over its "Skokie Valley Line" and does not use its "Shore Line" for that service. (Tr. 440.)

That starting at 63d and Dorchester Avenue, Chicago, respondent renders no carload freight service to any type of industry or team track until its line reaches the point just west of the McCormick Boulevard on the Skokie Valley Line, about 15 miles from the Loop district in Chicago; from McCormick Boulevard north respondent has freight service to sidings and industries until it reaches Harrison Street in the south part of Milwaukee. (Tr. 442.) North of Harrison Street respondent operates its merchandise dispatch or l. c. l. freight service, but no carload freight service. (Tr. 445.)

On its Shore Line the first siding on which respondent handles commercial freight is toward the south end of Highland Park, about 24 miles from Chicago. (Tr. 442.) On the Shore Line respondent renders two types of passenger service—a local service with
46 stops at all stations and a fast or limited service with stops at the main stations in each town on the line. Respondent also renders freight service on its Shore Line north of Highland Park.

On redirect examination B. J. Fallon further testified as follows: That respondent's Shore Line "is susceptible of being used for fast trains between Chicago and Milwaukee"; that respondent operated its fast trains over the Shore Line before completion of its Skokie Valley Line in June, 1926, and that it now operates its fast train service over the latter line because it makes better time. (Tr. 454.)

CHARLES E. THOMPSON was called as a witness on behalf of respondent, and, being duly sworn, testified as follows:

During the calendar year 1930 the total operating revenues of respondent were $6,581,961.40. Of that amount, $4,706,855.01, or approximately 78 per cent, was derived from passenger service and the remainder, $1,384,547.58, was derived from freight service. (Deft. Exhibit 32.) The revenue derived from carload freight handled by respondent was 8.63 per cent of the total revenue. The revenue derived from less-than-carload freight was 11.47 per cent of

the total revenue. The revenue from all freight, including mail, express, and milk, was 21.03 per cent of the total revenue. Of the revenue from carloads, 17.25 per cent was from traffic local to the respondent and 82.75 per cent was from interline traffic. Of the revenue from less-than-carload freight, 88.4 per cent was from local traffic and 11.58 per cent from interline traffic. (Tr. 479.)

47 Of the total revenue from freight over 60 per cent was derived from less-than-carload freight. (Deft. Exhibit 32.)

Respondent's methods of business solicitation are similar in some respects to the methods of steam railroads. It advertises in certain trade papers used by steam railroads. It is a member of certain traffic or tariff organizations to which steam railroads belong. It is a party to tariffs which apply to traffic throughout the United States and to traffic between the United States and Canada. It maintains no off-line soliciting agents such as are maintained by steam railroads. (Tr. 508–509.)

The securities issued by respondent each year since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual reports of respondent filed with that commission. Each report has shown the character of business handled by respondent and has also shown that the securities have been issued with the approval and under the authority of the regulating commissions of Wisconsin and Illinois. (Tr. 480.) The form of annual report prescribed by the Interstate Commerce Commission for use by electric lines requires that the character and par value of securities issued during the year be reported and that the authority under which issued be shown. In the year 1924, through inadvertence, the annual report of respondent to that commission failed to show the authority under which the securities were issued. An official of the commission directed respondent's attention to that omission by letter in January, 1926. An official of respondent advised the commission that the securities reported in 1924 were issued under authority of the regulating commissions of Wisconsin and Illinois. (Tr. 481–484.) (Deft. Exhibit 33.)

48 Prior to March, 1923, the general counsel of respondent filed a brief with the Interstate Commerce Commission in which respondent took the position that it should be excluded from section 15a of the interstate commerce act because it was an interurban electric railroad not engaged in the general transportation of freight and not operated as a part of a general steam railroad system of transportation. On March 29, 1923, the director of the Bureau of Finance of the commission advised the general counsel that—

" unless you are later advised to the contrary, this carrier will not be required to file returns in response to the commission's orders dated January 16, 1922, and March 16, 1922, ' in the matter of the recovery and payment of excess railway operating income under the provisions of section 15a of the interstate commerce act.' "

On April 19, 1923, the general counsel for respondent addressed a letter to the director of the Bureau of Finance of the commission referring to the brief previously filed and the correspondence had concerning the application of section 15a to respondent. On April 25, 1923, the director of the Bureau of Finance of the commission advised respondent that—

"unless you are later advised to the contrary, no further information will be required in connection with this order." (Deft. Exhibit 41.)

The respondent has not up to this time been advised by the commission to the contrary in respect to its claim of exemption from the provisions of section 15a. (Tr. 506.)

In its annual report to Congress for the year 1928, after citing the language excluding street, suburban, and interurban electric railways from various sections of the interstate commerce act, the commission said in part:

49 "Practically all of the interurban electric lines of the country are engaged to a greater or less extent in the transportation of freight. Ordinarily these lines have a preponderance of passenger traffic, but the large diversion of such traffic to highways through the increasing use of automobiles has led these carriers to endeavor to recoup these losses through increased participation in freight traffic."

The commission concluded its comment in its annual report of 1928 to Congress with the following recommendation as to needed amendments in the act:

"That the present exemption provisions of paragraph (22) of section 1, paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, *be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways, and participate in through interstate freight rates with such carriers;* provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned." (Italics ours.)

ROY A. PORTERFIELD, a witness called on behalf of the complainant, and, being duly sworn, testified in part as follows:

That complainant's Exhibit 3 was prepared to and does show the lengths of tracks laid in streets, and that since respondent's line through the streets is double tracked, the miles of track shown on that exhibit should be doubled in order to obtain the total miles of track laid in streets. (Tr. 124.)

PEARSON F. MARSH, a witness called on behalf of the complainant, and, being duly sworn, testified in part as follows:

50 That the investigation made by him with respect to respondent's operating revenues, freight and passenger, and other analyses of respondent's traffic and operations as a carrier, as testified to by him, were limited to the five-year period ending December 31, 1930. (Tr. 160–161.)

That respondent's records and accounts show that in 1924 it purchased two steam locomotives and in 1925 purchased ten additional steam locomotives. In 1925 and 1926 these locomotives were used exclusively in constructing the Skokie Valley line. After completion of that line a number of these steam locomotives were used extensively for transporting revenue freight on the Skokie Valley line. Two of these steam locomotives were sold in 1925, one in 1926, six in 1927, and one was sold in 1928. Respondent's records show no use of any steam locomotives during November and December, 1927, and January, 1928. (Tr. 197–198.)

52 COMPLAINANT'S EXHIBIT 2

Chicago North Shore & Milwaukee Railroad Company

Mileage statement

Description	State	1st main	2nd main	Yd. trk. & sid.	Total
Laurel Ave., Wilmette, to State line	Ill.	31.7748	31.7748	11.7247	75.2743
Skokie Valley line	"	26.2952	26.3104	16.1502	68.7558
Libertyville branch	"	8.8092	8.2259	4.1202	21.1553
Waukegan branch [1]	"	3.2940	3.0223	0.8102	7.1265
State line to Milwaukee	Wis.	35.9213	35.3392	8.8159	80.0764
Total		106.0945	104.6726	41.6212	252.3883
Tracks leased from C., M., St. P. & Pac. Wilson Ave., Chi., to Laurel St., Wilmette [2]	Ill.	7.83	7.83	0.23	15.89
Total used, exclusive of trackage rights and street-car operation only		113.9245	112.5026	41.8512	268.2783
Trackage rights from—					
Chicago Rapid Transit [3]	Ill.	16.97	16.97		33.94
Chicago & Milwaukee Elec. Ry [4]	Wis.	2.6752	2.6813	0.0910	5.4475
Total		19.6452	19.6513	0.0910	39.3875
Street-car operation only:					
In streets at Waukegan	Ill.	4.1333		0.6665	4.7998
Milwaukee [5]	Wis.	0.6784	0.6723		1.3507

[1] Does not include those tracks on which there is street-car operation only.
[2] Chicago Rapid Transit has trackage rights on these tracks.
[3] Used by Chicago Rapid Transit also in its operations.
[4] Used by Chicago and Milwaukee Electric Ry. in its street-car operations.
[5] Used by Chicago and Milwaukee Electric Ry. in its street-car operations, but not used by Chicago North Shore and Milwaukee.

[File endorsement omitted.]

53 EXHIBIT 3

Chicago, North Shore and Milwaukee Railroad Company

Tracks laid in streets

Town	Street	Tracks laid in area used for street traffic		Track zone not used for street purposes, not paved (feet)
		Paved (feet)	Not paved (feet)	
Wilmette	Greenleaf Ave	4,218		
"	Railroad Ave		870	
Kenilworth	Str		700	
"	"	646		
Winnetka	Wilson Ave. & Str			1,565
Hubbard Woods	Hubbard St	1,166		5,112
Glencoe	Glencoe Ave			
Highland Park	St. John Ave	602		2,033
Lake Forest	McKinley Road			1,425
North Chicago	Commonwealth			1,320
" "	State Str			*2,580
Waukegan	Marion & Genesee Str	*6,300		
Mundelein	Morris			1,155
Total		12,932	1,570	15,190
Miles		2.449	0.197	2.877
Trackage rights in Milwaukee over Chicago-Milwaukee Electric Ry., used jointly with the owner		*13,860		
Miles		2.625		
Street-car service only:				
In Waukegan: Various streets		21,800		
In Milwaukee: " "		¹ 3,530		
Total		25,330		
Miles		4.797		

*Street-car service operated over these tracks.

¹ This mileage owned and used by Chicago & Milwaukee Electric Ry. and is in addition to that over which the C. N. S. & M. R. R. has a trackage right.

COMPLAINANT'S EXHIBIT 6

Chicago North Shore and Milwaukee Railroad Company

Weight of main-line rails

Location	Ordinary "T" rails				Rails for use in pavement							Total
	65#	80#	90#	100#	"T" #375 91#	"T" #400 95#	Gruved #450, 98#	"T" #516, 102#	Gruved #494, 110#	Gruved #397, 127#	Gruved #456, 128#	
South or east bound												
Laurell Ave., Wilmette, to Harrison St., Milwaukee	8,951	134,331	.....	207,470	2,390	.....	301	.....	3,843	133	.....	357,419
Skokie Valley line	.....	78,517½	.....	60,401½	.....	.....	.....	.....	.....	.....	.....	138,919
Waukegan branch	.....	10,041	.....	131	5,705	304	.....	.....	.....	327	.....	16,508
Freight line at North Chicago	.....	2,540	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,540
Libertyville branch	29,849	11,553	70	1,961	.....	.....	.....	.....	.....	.....	.....	43,433
Total	38,800	236,982½	70	269,963½	8,095	304	301	.....	3,843	460	.....	558,819
Percentage	6.9	42.4	.....	48.3	1.4	0.1	0.1	.....	0.7	0.1	.....	100
Miles	7.348	44.883	0.013	51.129	1.533	0.058	0.057	.....	0.728	0.087	.....	105.837
North or west bound												
Laurell Ave., Wilmette, to Harrison St., Milwaukee	10,273	131,709	.....	205,651½	2,614	.....	257	.....	3,841	.....	.....	354,345½
Skokie Valley line	.....	86,263½	.....	52,575½	.....	.....	.....	.....	.....	.....	.....	138,839
Waukegan branch	.....	9,985	.....	143	6,031	.....	.....	746½	.....	336	.....	17,241½
Freight line at North Chicago	.....	3,773	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,773
Libertyville branch	20,985½	23,519½	60	1,948	.....	.....	.....	.....	.....	.....	.....	46,513
Total	31,258½	255,250	60	260,318	8,645	.....	257	746½	3,841	336	.....	560,712
Percentage	5.6	45.5	.....	46.4	1.5	.....	0.1	0.1	0.7	0.1	.....	100
Mileage	5.920	48.343	0.011	49.303	1.637	.....	0.049	0.141	0.727	0.064	.....	106.195
Total, both main tracks	70,058½	492,232½	130	530,281½	16,740	304	558	746½	7,684	796	.....	1,119,531
Percentage	6.1	44.0	.....	47.4	1.5	.....	0.1	0.1	0.7	0.1	.....	100
Miles	13.269	93.226	0.025	100.432	3.170	0.058	0.106	0.141	1.455	0.151	.....	212.032
Trackage rights over Chicago & Mil. Electric S. B.	.....	608	.....	371	114	6,674	.....	5,807	.....	.....	1,231½	14,865½
" " " " " " " " N. B.	.....	364	.....	327	130	6,690½	.....	5,838	.....	.....	1,248	14,597½
Total	.....	1,032	.....	698	244	13,364½	.....	11,645	.....	.....	2,479½	29,463
Percentage	.....	3.5	.....	2.4	0.8	45.4	.....	39.5	.....	.....	8.4	100
Miles	.....	0.195	.....	0.132	0.046	2.531	.....	2.205	.....	.....	0.470	5.580

Street-car operation only												
In Waukegan S. B.—Chi., N. S. & M. tracks					4,413			1,957		167		6,537
" " N. B.— " " "				1,018½	13,887	498		2,245		330		17,978½
" " S. B.—North Shore & Waukegan trks								1,437		163		1,600
In Milwaukee Chi. & Mil. Elec. (S. B.						3,530						3,530
" " not used by C. N. S. & M. (N. B.						3,572						3,572
Total				1,018½	18,300	7,600		5,639		660		33,217½
Percentage				3.1	55.1	22.9		16.9		2.0		100
Miles				0.193	3.466	1.439		1.068		0.125		6.291

55 COMPLAINANT'S EXHIBIT 7

Chicago North Shore and Milwaukee Railroad Company

Equipment

ELECTRIC LOCOMOTIVES

No.	Numbered	Weight	No. axles	No. motors	Type motor	Tonnage rating	Tractive effort	Date purchased
2	450, 451	35 tons	4	4	G. E. 205	400	17,500#	Prior to 1920.
3	452-3-4	50 "	4	4	G. E. 257	600	25,000#	Prior to 1920 for 452-453; 1923 for 454.
2	455-6 [1]	70 "	4	4	G. E. 251	1,200	35,000#	1927.

[1] NOTE.—These locomotives equipped with 192-cell storage batteries so that they may be operated on tracks which are not electrified.

FREIGHT EQUIPMENT

Kind	No.	Serial number	Length	Width	Height	Capacity
Refrigerator	5	240-244	30' 0"	8' 0"	12' 4"	30,000
Box	8	3013-3020	40' 6"	9' 4"	15' 5"	60,000
"	2	3021-3022	36' 11"	9' 6"	13' 1½"	45,000
Side dump	2	1218-1219	20' 9"	9' 6"	7' 4"	36,000
" "	48	1224-1231, 1233-1264, 1266-1273	28' 0"	8' 6"	8' 10"	36,000
" "	20	1274-1293	31' 1½"	10' 4"	8' 5½"	80,000
Flat	16	1400-1402, 1404-1406, 1408-1417	34' 1"	9' 9"		60,000
"	2	1418-1419	34' 1"	9' 9"		80,000
"	4	1500-1503	43' 0"	9' 4"		40,000
"	10	1504-1513	60' 4"	9' 4"		80,000
"	2	2010-2022	34' 1"	9' 9"		60,000
"	1	2060	40' 6"	9' 2"		80,000
Gondola	52	2000 series	36' 1"	9' 11"	7' 7"	80,000
"	16	5000 "	42' 1"	10' 1½"	8' 4"	100,000
"	20	6000 "	41' 8"	10' 4"	8' 5"	100,000

MERCHANDISE DISPATCH CARS (WOOD BODY)

No.	Serial number	Length	Width	Weight	Motor or trailer	Capacity
1	6	50' 0"	8' 10½"	65,000	Motor	20,000.
2	200-202	52' 3"	8' 8¾"	70,000	"	20,000.
37	203-259	50' 0"	8' 8"	74,000	"	40,000.
5	240-244	50' 0"	8' 8"	69,500	Trailer	35,000-refrigerators.
1	5	39' 8"	8' 11"	40,000	"	20,000.

150 cars with motors; 32 as trailers; total, 182.
146 " " M.C.B. drawbars, 27" from rail, 4' 10" long.
2 " " Other " 16" " " 4' 6" "
34 " " " " 16" " " 5' 7" "

No.	Weight	No.	Length	No.	Vestibule offset to clear platforms
2	41,000	2	47' 2"	2	0"
7	55,000	34	52' 3"	13	3"
11	75,000	116	55' 3"	15	4"
10	77,000	30	56' 1"	152	6"
17	78,000				
9	81,000				
		No.	Width		
5	86,000	2	8' 6"		
27	91,000	161	8' 8"		
4	94,000	13	8' 9"		
22	100,000	6	9' 1"		
8	103,000				
60	104,000				

No.	Seating	Type
9	22-24	Dining cars.
1	16	Parlor car.
4	31	" "
5	28	Combination baggage passenger.
1	32	" " "
1	40	" " "
4	48	Wood passenger.
43	50	Steel "
2	51	Wood & Steel passenger.
26	52	" " "
7	52	Steel " " (7 trailers).
67	54	" " "
15	56	" " (13 trailers).

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COMPLAINANT'S EXHIBIT 8

Chicago, North Shore and Milwaukee Railroad Company

Passing tracks

Location	Length [1]	Car capacity		
		Freight	Passenger	
Indian Hill	346	7	5	
Eldorado	269	5	4	
Tower Road	406	9	7	Used as team track also.
Green Bay Road	379	8	6	
Lavina Park, N. B	1,289	28	22	" " " " "
" " N. & S. B	680	15	11	Center trk.
Farwells	850	18	14	Used as team track also.
Kennedys	1,000	22	17	" " " " "
Great Lakes, N. B	1,326	29	22	
" " S. B	778	16	13	
Zion, N. B	1,070	23	18	Used as team track also.
" S. B	760	16	13	
Winthrop Harbor	500	11	8	" " " " "
Racine	319	7	5	" " " " "
Four Mile Road	1,212	26	20	" " " " "
Six " "	683	15	11	" " " " "
Oakwood	511	11	8	" " " " "
Kelleys	1,939	43	33	" " storage " "
St. Marys of the Lake	755	17	13	

[1] NOTE—Length given is beyond the clearance point of tracks.

Passing tracks: 8, with total length of 5,293; capacity, 113 freight or 87 pass. cars; 11 used as team or storage tracks; total length, 9,779; capacity, 213 freight or 163 passenger cars.

Industry tracks, team tracks, & freight tracks

Location	Number tracks	Total length [1]	Car capacity	
			Freight	Passenger
Beach Street	1	210	4	3
Elm Place	3	1,351	29	23
Vine Ave	2	1,037	22	17
Highwood	2	1,500	32	25
Northgate	1	580	12	10
Sacred Heart	1	190	4	3
Great Lakes	3	2,996	62	51
North Chicago	9	5,108	109	85
Waukegan	14	8,728	209	155
Beach	1	604	13	10
South Kenosha	1	752	16	13
Kenosha	9	3,974	85	64
Burlington Road	2	2,791	61	47
Birch Road	1	874	19	15
Berryville	1	572	12	9
Pipers	1	861	19	15
Klinkerts	1	501	11	8
Racine	3	2,032	29	22
58 Racine Quarry	6	6,753	145	113
Milwaukee	3	1,389	30	6
Crawford Ave	7	7,935	174	133
Kostner Ave	2	4,991	111	83
Oakton St	1	747	16	12
Dempster St	1	1,772	38	30
Church St	1	290	6	5
Harrison St	3	1,493	33	25
Wilmette Ave	2	2,005	44	34
Lake Ave	3	3,040	69	50
Northfield	7	3,447	75	56
Brier Gate	4	2,422	53	44
West Park Ave	1	688	15	11
Deerpath	1	1,945	43	33
Knollwood	1	897	20	15
Roundout	1	1,050	23	18
Green House	1	262	6	4
Liberty Lake	5	5,689	127	96
Mundelein	2	1,280	27	21
Total	108	82,765	1,801	1,364

Pettibone freight classification yard, 11 tracks, with freight-car capacity of 265.

Interchange tracks

Location	Conn. Rd.	No. tracks	Length [1]	Capacity
Highwood	C. & N. W.	1	480	7
Racine	C. M. St. P. & P.	1	1,040	21
Roundout	E. J. & E.	2	5,749	129
	C. M. St. P. & P.			
Mundelein	M. St. P. & S. S. M.	2	2,166	48
Niles Center	C. & N. W.	2	.....	New connections.
Great Lakes	C. & N. W.	2	.....	" "

[1] NOTE.—Length given is beyond the clearance point of tracks.

COMPLAINANT'S EXHIBIT 18

Statement of transportation revenues of the Chicago, North Shore & Milwaukee Railroad Company for the five years ended December 31st, 1930

Account No.	Account	1926		1927		1928		1929		1930	
		Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent
(101)	Passenger revenue	[1] $5,666,172.15	78.6	[2] $5,892,449.55	78.6	$5,519,901.29	75.5	$5,542,767.95	74.7	$4,601,581.70	73.5
(102)	Baggage revenue	21,551.66	.03	26,576.90	0.4	32,502.51	0.4	37,915.79	0.5	34,342.72	0.6
(103)	Parlor, dining, and special car revenue	[3] 224,683.22	3.1	[4] 191,175.70	2.5	120,977.84	1.7	110,516.84	1.5	70,930.59	1.2
(104)	Mail revenue	37,140.08	0.5	48,867.01	0.7	54,112.63	0.7	58,104.57	0.8	57,880.04	1.0
(105)	Express revenue	6,286.07	0.1	3,634.72	0.0	2,012.74	0.0	2,422.89	0.0	1,530.47	0.0
(106)	Milk revenue	1,245,560.87	17.3	1,328,499.57	17.7	1,580,040.11	21.6	1,664,981.70	22.4	1,323,023.70	21.7
(107)	Freight revenue	9,900.00	0.1	6,669.72	0.1	5,532.21	0.1	5,704.18	0.1	1,860.73	0.0
(108)	Switching revenue	437.00	0.0	380.10	0.0	500.00	0.0	359.37	0.0	252.64	0.0
(109)	Miscellaneous										
	Total revenue from transportation	$7,211,820.85	100.0	$7,408,253.27	100.0	$7,315,579.33	100.0	$7,422,773.29	100.0	$6,091,402.59	100.0

[1] Includes $194,613.91 revenue from motor-coach operations.
[2] Includes $181,247.31 revenue from motor-coach operations.
[3] Includes $95,985.79 revenue from motor-coach operations.
[4] Includes $65,821.32 revenue from motor-coach operations.

COMPLAINANT'S EXHIBIT 20

Chicago North Shore & Milwaukee Railroad Company

Statement of revenues on carload and less-than-carload freight for the five years 1926 to 1930, inclusive (see Note)

Year	L. C. L. freight		Carload freight		Total revenues on freight
	Revenue	Per cent	Revenue	Per cent	
1926	$1,012,794.18	77.9	$286,619.64	22.1	$1,299,413.82
1927	1,019,206.49	73.4	368,844.63	26.6	1,388,051.12
1928	1,058,938.37	64.5	583,259.32	35.5	1,642,197.69
1929	1,073,097.81	62.0	658,474.90	38.0	1,731,572.71
1930	814,319.56	58.8	570,228.02	41.2	1,384,547.58

NOTE.—Comprises express, milk, freight, switching, and miscellaneous revenues as reflected by accounts 105 to 109, both inclusive.

COMPLAINANT'S EXHIBIT 21

Chicago North Shore & Milwaukee Railroad Company

Statement of local and interline freight tonnage divided between carload and less-than-carload traffic for the five years 1926 to 1930, inclusive (see Note)

	Carload freight		L. C. L. freight		Total freight traffic	
	Net tons	Per cent	Net tons	Per cent	Net tons	Per cent
1926:						
Local	252,028.47	49.7	136,168.18	92.5	388,196.65	59.3
Interline	255,068.15	50.3	10,972.96	7.5	266,041.11	40.7
Total	507,096.62		147,141.14		654,237.76	
Per cent	(77.5%)	100.0	(22.5%)	100.0	(100.0%)	100.0
1927:						
Local	185,253.80	26.7	132,231.11	89.0	317,484.91	37.6
Interline	509,909.15	73.3	15,870.47	11.0	525,779.62	62.4
Total	695,162.95		148,101.58		843,264.53	
Per cent	(82.4%)	100.0	(17.6%)	100.0	(100.0%)	100.0
1928:						
Local	283,890.40	25.8	142,073.64	88.2	425,964.04	33.7
Interline	817,849.89	74.2	18,964.77	11.8	835,814.66	66.3
Total	1,101,740.29		161,038.41		1,262,778.70	
Per cent	(87.2%)	100.0	(12.8%)	100.0	(100.0%)	100.0
1929:						
Local	283,610.53	22.5	141,675.87	87.3	425,286.40	29.9
Interline	976,628.22	77.5	20,592.74	12.7	997,220.96	70.1
Total	1,260,238.75		162,268.61		1,422,507.36	
Per cent	(88.6%)	100.0	(11.4%)	100.0	(100.0%)	100.0
1930:						
Local	171,528.87	15.0	106,976.08	84.7	278,504.95	22.2
Interline	963,017.60	85.0	19,252.40	15.3	982,270.00	77.8
Total	1,134,546.47		126,228.48		1,260,774.95	
Per cent	(90.0%)	100.0	(10.0%)	100.0	(100.0%)	100.0

NOTE.—Excludes carload freight handled in switching service.

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EXHIBIT 22

Chicago North Shore & Milwaukee Railroad Company

Statement of passenger and freight revenues, showing amounts earned on local and interline traffic for the years 1926 to 1930, inclusive

Character of traffic	Passenger revenue		Freight revenue	
	Amount	Per cent	Amount	Per cent
1926:				
Local	[1] $5,442,020.37	99.46	$1,075,967.49	86.38
Interline	29,537.87	0.54	169,593.18	13.62
Total	$5,471,558.24	100.00	$1,245,560.67	100.00
1927:				
Local	[1] $5,663,004.85	99.16	$1,036,329.77	78.01
Interline	48,197.39	0.84	292,169.80	21.99
Total	$5,711,202.24	100.00	$1,328,499.57	100.00
1928:				
Local	$5,424,898.87	98.28	$1,003,534.35	69.21
Interline	95,002.42	1.72	486,505.76	30.79
Total	$5,519,901.29	100.00	$1,580,040.11	100.00
1929:				
Local	$5,448,153.86	98.29	$1,086,618.10	65.26
Interline	94,614.09	1.71	578,363.60	34.74
Total	$5,542,767.95	100.00	$1,664,981.70	100.00
1930:				
Local	$4,487,807.41	97.53	$765,477.77	57.86
Interline	[2] 113,774.29	2.47	557,545.93	42.14
Total	$4,601,581.70	100.00	$1,323,023.70	100.00

[1] Excludes motor-coach operations.
[2] Increase due to tickets sold under joint rates with the Metropolitan Motor Coach Co., for the national air races held at Curtis Airport ($22,515.29).

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COMPLAINANT'S EXHIBIT 23

Chicago North Shore & Milwaukee Railroad Company

Analysis of passenger revenues for month of September, 1930

Class of tickets	Total amount	Per cent of local fares	Between cities (Note A)	
			Amount	Per cent of total
Local				
One-way tickets	$201,701.06	59.5	$139,299.23	69.1
10 ride "	35,254.10	10.4	7,364.22	20.9
25 " "	47,855.60	14.1	16,452.95	34.4
50 " —Childs	7,617.14	2.3	174.75	2.3
50 " —Monthly	8,257.67	2.4	64.13	0.8
60 " — "	12,071.35	3.6	3,292.81	27.3
Shoppers R. T	11,084.73	3.3	2,139.00	19.3
100 coupon book	47.00	0.0		
Cash fares	14,839.45	4.4		
			4,794.88	
Total	$338,728.10	100.0	$173,581.97	51.2
Interline				
C. N. S. & M's. proportion of interline ticket sales	$9,235.64			
Due from foreign lines on interline tickets	4,725.16			
Total	$13,960.80			
Waukegan city line	12,601.32			
Grand total	$365,290.42			
Refunds, transfer charges, and miscellaneous debits	*1,473.67			
Exchange tickets and miscellaneous credits	442.99			
Total passenger revenue	$364,259.74			

NOTE A.—Ticket sales between Chicago stations and Waukegan, Ill., Kenosha, Racine, and Milwaukee, Wis.

*Red.

COMPLAINANT'S EXHIBIT 24

Chicago North Shore and Milwaukee Railroad Company

Statement of interline ticket sold for transportation of passengers via the North Shore Line in coonnection with steam railroads, steamship lines, air lines, and motor-coach lines as shown by interline passenger revenue accounts for month of September, 1930

INTERLINE TICKETS SOLD AT STATIONS ON THE NORTH SHORE LINE

For transportation via—	To points in—
STEAM RAILROADS	
1. Atchison, Topeka & Santa Fe	Calif., Colo., Kans., Mo., New Mex., Tex.
2. Atlantic Coast Line	Fla., So. Car.
3. Baltimore & Ohio	Dist. of Col., Md., N. M., N. Y., N. C., Pa., Va.
4. Boston & Albany	Conn., Mass.
5. Boston & Maine	Mass.
6. Canadian National	Ontario and Quebec, Canada.
7. Canadian Pacific	Ontario and Quebec, Canada.
8. Central of Georgia	Fla., Ga.
9. Central Railroad of New Jersey	N. J.
10. Chesapeake & Ohio	Ind., Ohio, Va., W. Va.
11. Chicago and Alton	Ark., Calif., Ill., Mo.
12. Chicago, Burlington & Quincy	Calif., Ia., Mont., Neb., Wis.
13. Chicago Great Western	Ia.
14. Chicago, Indianapolis & Louisville	Ind., Ky., Ohio.
15. Chicago, Milwaukee, St. Paul & Pacific	Ia., Minn., Mich., S. D., Wash., Wis.
16. Chicago, Rock Island & Pacific	Ariz., Calif., Colo., Ia., Mo.
17. Cincinnati, New Orleans & Texas Pacific	N. C.
18. Cleveland, Cincinnati, Chicago & St. Louis	Fla., Ind., Ky., N. C., Ohio, Va.
19. Delaware, Lackawanna & Western	N. Y., Pa.
20. Denver & Rio Grande	Calif.
21. Duluth, South Shore & Atlantic	Mich.
22. Erie	Mass., N. Y., Ohio, R. I.
23. Grand Trunk	Mich., N. Y., Ontario and Quebec, Canada.
24. Great Northern	Mont.
25. Illinois Central	Ala., Iowa, La., Mo., Tenn.
26. International Great Northern	Tex.
27. Lehigh Valley	N. Y.
28. Louisville and Nashville	Fla., Ga., Ky., Tenn.
29. Michigan Central	Conn., Mass., Mich., N. J., N. Y., Ontario & Quebec.
30. Mineral Range	Mich.
31. Minneapolis, St. Paul & Saulte Ste. Marie	Minn., Wis.
32. Missouri Pacific	Mo., Texas.
31. Minneapolis, St. Paul & Saulte Ste Marie	Minn., Wis.
32. Missouri Pacific	Mo., Texas.
33. Nashville, Chattanooga & St. Louis	Fla., Ga., Tenn.
34. New York Central	Conn., Ind., Mass., Mich., N. Y., Ohio.
35. New York, Chicago & St. Louis	N. Y., Ohio, Penn.
36. New York, New Haven & Hartford	Conn., Mass.
37. Norfolk & Western	Va.
38. Northern Pacific	Wash., Wyo.
39. Pennsylvania	Ky., Md., Mich., N. J., N. Y., Ohio, Penn.
40. Richmond, Fredricksburg & Potomac	N. C.
41. Seaboard Air Line	N. C.
42. St. Louis-San Francisco	Ark., Mo.
43. St. Louis Southwestern	Mo.
44. Southern Pacific	Ariz., Calif.
45. Southern	N. C., S. C.
46. Texas & New Orleans	Calif.
47. Temiskaming & Northern Ontario	Ont., Canada.
48. Texas & Pacific	Tex.
49. Union Pacific	Calif., Colo., Kans.
50. Western Pacific	Calif.
STEAMSHIP LINES	
51. New England S/S Co	R. I.
52. Norfolk & Washington S/S Co	Va.
AIR LINES	
53. Stout Air Line	Mich.
54. Universal Air Lines	Mass.
MOTOR COACH LINES	
55. Metropolitan Motor Coach System	Ill., Wis.

Statement of interline ticket sold for transportation of passengers via the North Shore Line in connection with steam railroads, steamship lines, air lines, and motor-coach lines as shown by interline passenger revenue accounts for month of September, 1930—Continued

INTERLINE TICKETS SOLD BY STEAM RAILROADS TO POINTS ON THE NORTH SHORE LINE

Steam railroads	From stations in—
1. Atchison, Topeka & Santa Fe	Calif., Kans.
2. Baltimore & Ohio	Del., Md., N. Y., Ohio, Penn.
3. Boston & Albany	Mass.
4. Boston & Maine	Mass., N. H.
5. Chesapeake & Ohio	Va.
6. Chicago & Alton	Ill., Kans., Mo.
7. Chicago & North Western	Ill.
8. Chicago & Eastern Illinois	Ill., Ind.
9. Chicago, Burlington & Quincy	Iowa, Mo., Neb.
10. Chicago Great Western	Iowa.
11. Chicago, Indianapolis & Louisville	Ind., Ky.
12. Chicago, Milwaukee, St. Paul & Pacific	Mich., Minn., S. D., Wis.
13. Chicago, Rock Island & Pacific	Ill., Iowa.
14. Chicago, St. Paul, Minneapolis & Omaha	Wis.
15. Cleveland, Cincinnati, Chicago & St. Louis	Ind., Ohio.
16. Delaware, Lackawan'a & Western	N. J., N. Y.
17. Duluth, South Shore & Atlantic	Mich.
18. Duluth, Missabe & Northern	Minn.
19. Erie	N. J., N. Y., Ohio.
20. Grand Trunk	Mich.
21. Great Northern	Wash.
22. Illinois Central	Ill., Iowa, Tenn.
23. Kansas City Southern	Kans., Mo.
24. Lehigh Valley	N. Y.
25. Louisville & Nashville	Ky.
26. Michigan Central	Mich.
27. Minneapolis, St. Paul & Sault Ste. Marie	Mich., Minn., Wis.
28. New York Central	Ind., N. Y., Ohio.
29. New York, Chicago & St. Louis	N. Y., Ohio.
30. New York, New Haven & Hartford	R. I.
31. Norfolk & Western	Va.
32. Pennsylvania	Ind., Ky., N. J., N. Y., Ohio, Penn.
33. Pere Marquette	Mich.
34. Wabash	Ill., Mich., Mo.
35. Western Pacific	Calif.

COMPLAINANT'S EXHIBIT 25

Chicago North Shore & Milwaukee Railroad Company

Statement of carload freight interchanged with connecting carriers and local carloads handled during the five years 1926 to 1930, inclusive. (*See Note*)

Connecting carriers and interchange points	1926	1927	1928	1929	1930
Carloads interchanged					
Elgin, Joliet & Eastern Railway: Rondout, Ill.	6,016	8,781	12,576	14,408	13,072
Chicago, Milwaukee, St. Paul & Pacific Railway:					
Rondout, Ill.	.....	1,996	3,830	3,636	3,316
Racine, Wis.	.....	854	2,235	2,905	3,119
Buena Park, Ill.	.....	.....	740	1,144	1,486
Chicago & North Western Railway: Highwood, Ill.	.....	323	281	242	163
Minneapolis, St. Paul & S. Ste. Marie Railroad: Mundelein, Ill.	14	51	129	1,151	1,877
Total carloads interchanged	6,030	12,205	19,791	23,486	23,033
Per cent of total handled	46.6	72.4	73.3	77.7	86.9
Carloads—Local					
Total carloads—Local	6,917	4,664	7,202	6,758	3,451
Per cent of total handled	53.4	27.6	26.7	22.3	13.1
Total carloads handled	12,947	16,869	26,993	30,244	26,494

NOTE.—Excludes carload freight handled in switching service.

COMPLAINANT'S EXHIBIT 27

Chicago North Shore & Milwaukee Railroad Company

Statement of carload freight handled in local, interline, and bridge traffic during the year ended December 31, 1930. (*See Note A*)

Year 1930	Originating on line				Received from connecting carriers				Total interline (See Note B)		Total carload traffic	
	Local traffic		Interline traffic		Interline traffic		Bridge traffic					
	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons
January	37	1,777.1	60	1,625.7	806	33,768.1	733	31,408.2	1,599	66,802.0	1,636	68,579.1
February	94	4,583.5	38	835.2	807	34,221.9	611	25,386.3	1,456	60,443.4	1,550	65,026.9
March	209	9,655.3	52	1,173.4	730	30,962.5	675	26,924.1	1,457	59,060.0	1,666	68,715.3
April	197	8,320.3	94	2,414.0	914	39,178.9	607	21,240.6	1,615	62,833.5	1,812	71,153.8
May	307	13,053.9	48	1,071.3	952	41,718.3	723	23,867.7	1,723	66,657.3	2,030	79,711.2
June	687	30,667.9	96	2,916.1	1,457	71,461.4	820	29,949.4	2,373	104,376.9	3,060	134,993.8
July	450	23,768.7	89	3,162.9	1,449	67,112.0	699	27,542.3	2,237	97,817.2	2,687	121,585.9
August	495	27,885.8	97	2,872.4	1,516	74,070.0	665	28,663.1	2,278	105,605.5	2,773	133,491.3
September	518	30,048.0	106	2,838.3	1,524	72,612.2	772	28,325.4	2,402	103,775.9	2,920	133,823.9
October	278	13,003.4	161	3,581.0	1,284	56,972.5	988	37,232.2	2,433	97,785.7	2,711	110,789.1
November	82	3,928.9	211	4,281.4	1,044	46,735.8	726	28,226.9	1,981	79,244.1	2,063	83,173.0
December	107	4,837.5	95	2,688.3	782	32,221,1	602	23,756.7	1,479	58,666.1	1,586	63,503.6
Total for year	3,461	171,530.3	1,147	29,460.0	13,265	601,034.7	8,621	332,522.9	23,033	963,017.6	26,494	1,134,547.9
Per cent of total carloads	13.1%		4.3%		50.1%		32.5%		(86.9%)		100%	
Per cent of total C. L. tonnage		15.1%		2.6%		52.9%		29.4%		(84.9%)		100%

NOTE A.—Excludes carload freight handled in switching service.

NOTE B.—Comprises all carload freight interchanged with connecting carriers, including bridge traffic; all such interchanges were made with steam railroads.

Chicago North Shore & Milwaukee Railroad Company

Statement of Carload Freight Showing Commodities Transported in Local, Interline, and Bridge Traffic during Month of September, 1930.
(See Note A)

No.	Commodity group or class	Originating on line				Received from connecting carriers				Total interline (see Note B)		Total carload traffic	
		Terminating on line		Delivered to connecting carriers		Terminating on line		Delivered to connecting carriers					
		Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons
	GROUP I.—*Products of agriculture (C. L.)*												
50	Flour, wheat					1	20.8	2	51.4	3	72.2	3	72.2
61	Mill products, n. o. s.							2	45.3	2	45.3	2	45.3
70	Hay and alfalfa					1	11.0			1	11.0	1	11.0
140	Cabbage			35	472.9					35	472.9	35	472.9
141	Onions			19	301.6					19	301.6	19	301.6
164	Products of agriculture, n. o. s.							1	12.3	1	12.3	1	12.3
	Totals			54	774.5	2	31.8	5	109.0	61	915.3	61	915.3
	GROUP II.—*Animals and products*												
	None.												
	GROUP III.—*Products of mines*												
290	Anthracite coal					20	743.8			20	743.8	20	734.8
300	Bituminous coal			1	54.7	252	12,889.3	250	12,543.8	503	25,487.8	503	25,487.8
310	Coke					53	1,811.2	1	36.9	54	1,848.1	54	1,848.1
350	Gravel and sand (other than glass or molding)	133	6,957.2			529	31,364.1	7	318.7	536	31,682.8	669	38,640.0
351	Stone, broken, ground, or crushed	381	22,974.3	7	459.7	2	113.8			9	573.5	390	23,547.8
352	Stone, rough, n. o. s.					20	738.0			20	738.0	20	738.0
	Totals	514	29,931.5	8	514.4	876	47,660.2	258	12,899.4	1,142	61,074.0	1,656	91,005.5

Statement of Carload Freight Showing Commodities Transported in Local, Interline, and Bridge Traffic during Month of September, 1930. (See Note A)—Continued

No.	Commodity group or class	Originating on line				Received from connecting carriers				Total interline (see Note B)		Total carload traffic	
		Terminating on line		Delivered to connecting carriers		Terminating on line		Delivered to connecting carriers					
		Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons	Carloads	Net tons
	GROUP IV.—*Products of forests*												
401	Posts, poles, and piling					10	224.5	144	3,827.4	154	4,051.9	154	4,051.9
402	Wood (fuel)					1	20.7			1	20.7	1	20.7
430	Lumber, shingles, lath					29	689.5	10	230.6	39	920.1	39	920.1
431	Box, crate, and cooperage materials					1	16.4	2	30.7	3	47.1	3	47.1
443	Products of forests, n. o. s.							3	41.2	3	41.2	3	41.2
	Totals					41	951.1	159	4,129.9	200	5,081.0	200	5,081.0
	GROUP V.—*Manufactures and miscellaneous*												
450	Petroleum oils, refined, and all other gasolines			2	69.2	39	1,078.7	27	754.2	68	1,902.1	68	1,902.1
451	Fuel, road, and petroleum residual oils, n. o. s.					62	2,160.9	2	52.6	64	2,213.5	64	2,213.5
452	Lubricating oils and greases					1	15.3	9	190.8	10	206.1	10	206.1
500	Rails, fastenings, frogs and switches					6	266.1			6	266.1	6	266.1
510	Cast-iron pipe and fittings	1	26.5			6	160.7	22	456.1	28	616.8	29	643.3
511	Iron and steel pipe and fittings, n. o. s.					5	214.3	201	7,333.3	206	7,547.6	206	7,547.6
513	Iron and steel, rated 5th class, n. o. s. (also tin and terne plate)					3	72.5	3	88.0	6	160.5	6	160.5
530	Machinery and boilers			1	6.1					1	6.1	1	6.1
540	Cement, natural or Portland (building)					117	6,098.6	18	761.9	135	6,860.5	135	6,860.5
550	Brick, common	3	90.0	39	1,428.0	4	138.3			43	1,566.3	46	1,656.3
551	Brick, n. o. s., and building tile					6	229.3	1	27.4	7	256.7	7	256.7
552	Artificial stone n. o. s.					92	2,965.8			92	2,965.8	92	2,965.8
560	Lime, common (quick or slaked)					10	150.0			10	150.0	10	150.0
561	Plaster (stucco or wall) and dry kalsomine					3	101.3			3	101.3	3	101.3
570	Sewer pipe and drain tile (not metal)					70	1,059.2	11	264.6	81	1,323.8	81	1,323.8
583	Railway car wheels, axles, and trucks					1	20.0			1	20.0	1	20.0
592	Automobiles and auto trucks, K. D. and parts n. o. s.					5	104.2			5	104.2	5	104.2
593	Automobile and auto truck tires					1	17.4			1	17.4	1	17.4
630	Ice					8	293.7			8	293.7	8	293.7
640	Fertilizers, n. o. s.					1	15.0			1	15.0	1	15.0
650	Newsprint paper					4	111.4			4	111.4	4	111.4
662	Explosives, n. o. s.							3	38.0	3	38.0	3	38.0

680	Canned food products, n. o. s.					2	42.5	2	39.2	4	81.7	4	81.7
694	Paper bags and wrapping paper							2	46.2	2	46.2	2	46.2
695	Paperboard, pulpboard, and wallboard (paper)					1	24.4	16	368.3	17	392.7	17	392.7
701	Manufactures and miscellaneous, n. o. s.			2	46.1	158	8,629.5	33	766.5	193	9,442.1	193	9,442.1
	Totals	4	116.5	44	1,549.4	605	23,969.1	350	11,187.1	999	36,705.6	1,003	36,822.1
	Grand total, carload traffic	518	30,048.0	106	2,838.3	1,524	72,612.2	772	28,325.4	2,402	103,775.9	2,920	133,823.9
	Per cent of total carloads	17.8%		3.6%		52.2%		26.4%		(82.2%)		100.0%	
	Per cent of total C. L. tonnage		22.4%		2.1%		54.3%		21.2%		(77.6%)		100.0%

NOTE A.—Excludes carload freight handled in switching service.

NOTE B.—Comprises all carload freight interchanged with connecting carriers, including bridge traffic; all such interchanges were made with steam railroads.

70 COMPLAINANT'S EXHIBIT 29

Chicago North Shore & Milwaukee Railroad Company

Statement of cars interchanged between C., N. S. & M. Ry., and connecting steam railroads in one day, viz., September 30, 1930

Name of connecting carrier and interchange point	Received by C. N. S.		Delivered by C. N. S.	
	Loaded	Mty.	Loaded	Mty.
E. J. & E. at Rondout, Ill.	41	4	7	49
C. M. St. P. & P. at Rondout, Ill.	8			23
C. M. St. P. & P. at Racine, Wis.	9	16	11	
C. M. St. P. & P. at Buens Park, Ill.	3			6
C. & N. W. at Highwood, Ill.*				
M. St. P. & S. S. M. at Mundelein, Ill.	1		1	2

* Cars were interchanged on other days during Sept., 1930.

71 COMPLAINANT'S EXHIBIT 30

Chicago North Shore and Milwaukee Railroad Company

Summary of equipment owned as of September 30, 1930

Type of equipment	With electric equipment	Without electric equipment	Total
Passenger cars:			
Passenger cars—Local service	148	20	168
" " City service	44		44
Dining cars	2	7	9
Parlor cars		5	5
Total	194	32	226
Freight cars:			
Merchandise despatch	41		41
" " refrigerator		6	6
Flat cars		20	20
Special flat cars		14	14
Gondolas		* 88	88
Side dumps		70	70
Box cars		3	3
Cabooses		6	6
Total	41	207	248
Company service:			
Work cars	3	3	6
Snow plows		2	2
Sweepers	4		4
Other cars	2	24	26
Total	9	29	38
Locomotives: Electric	7		7

* 35 are suitable for interchange with steam railroads.

72 COMPLAINANT'S EXHIBIT 33

Chicago North Shore & Milwaukee Railroad Company

Summary of per diem for month of September, 1930

	Amount
PAID TO RAILROAD	
1. Atchison, Topeka & Santa Fe	$22.00
2. Atlantic Coast Line	1.05
3. Baltimore & Ohio	89.00
4. Belt Ry. of Chicago	17.00
5. Canadian National	16.00
6. Canadian Pacific	41.00
7. Chicago and North Western	406.00
8. Central R. R. of New Jersey	7.00
9. Central Vermont	5.00
10. Chicago & Illinois Midland	5.00
11. Colorado & Southern	9.00
12. Chicago, Indianapolis & Louisville	7.00
13. Chicago & Illinois Western	31.00
14. Central of Georgia	6.00
15. Chicago Great Western	10.00
16. Cambria & Indiana	4.00
17. Chicago & Western Indiana	3.00
18. Chicago & Alton	14.00
19. Chicago & Eastern Illinois	130.00
20. Chesapeake & Ohio	233.00
21. Chicago, Burlington & Quincy	191.30
22. Chicago, Milwaukee, St. Paul and Pacific	1,656.87
23. Chicago, Rock Island & Pacific	27.00
24. Cincinnati Northern	5.00
25. Cleveland, Cincinnati, Chicago and St. Louis	152.00
26. Delaware, Lackawanna & Western	27.00
27. Duluth, South Shore & Atlantic	3.00
28. Denver & Rio Grande Western	2.00
29. Elgin, Joliet & Eastern	224.00
30. Erie	65.00
31. Fort Worth & Denver City	2.00
32. Great Northern	12.00
33. Gulf, Mobile & Northern	2.00
34. Illinois Central	771.96
35. International—Great Northern	5.00
36. Lehigh Valley	4.00
37. Louisville & Nashville	158.00
38. Michigan Central	35.00
39. Minn., St. Paul & Sault Ste. Marie (Soo)	5.00
40. Missouri-Kansas-Texas	1.00
41. Missouri Pacific	57.00
42. Minneapolis & St. Louis	3.00
43. Mobile & Ohio	10.00
44. New York Central	98.00
45. Norfolk & Western	98.00
46. New Jersey, Indiana & Illinois	2.00
47. New York, Chicago & St. Louis (NKP)	72.00
48. New York, Susquehanna & Western	4.00
49. New York, New Haven & Hartford	5.00
50. New York, Ontario & Western	3.00
51. Nashville, Chattanooga & St. Louis	4.00
52. Northern Pacific	33.00
53. Pennsylvania	162.00
54. Pere Marquette	2.00
55. Pittsburgh & Lake Erie	24.00
56. Peoria & Eastern	14.00
57. Richmond, Fredericksburg & Potomac	6.00
58. Reading	35.00
59. St. Louis-San Francisco	88.00
73 60. St. Louis-Southwestern	17.00
61. Southern Pacific	51.00
62. Southern	18.00
63. Texas & New Orleans	13.00
64. Union Pacific	40.00
65. Virginian	48.00
66. Wabash	73.00
67. Wheeling & Lake Erie	6.00
68. Western Pacific	11.00
69. Wichita Valley	3.00
	5,397.13
PRIVATE CAR COMPANIES	
70. American Refrigerator Transit Co. (ART)	$0.66
71. American Steel Car Lines, Inc. (ASIX)	1.62
72. Continental Oil Co. (CONX)	2.82
73. California Disptach Line (CDLX)	.18
74. Crystal Oil Refining Corp. (CORX)	1.26

Summary of per diem for month of September, 1930—Continued

	Amount
PRIVATE CAR COMPANIES—continued	
75. Deep Rock Oil Corp. (DRX)	$0.54
76. Empire Oil & Refining Co. (EGX) (ERIX)	1.71
77. General American Tan Car Corp. (GATX)	4.20
78. Indiana Refining Co. (IRCS) (WTLX)	1.53
79. Taxman Refining Co., Inc. (JMTX)	1.26
80. Johnson Oil Refining Co. (JORX)	1.08
81. Keith Ry. Equipment Co. (KTX)	.36
82. Kanotex Refining Co., The (KOTX)	2.88
83. Globe Oil & Refining Co. of Illinois (LMRX)	.54
84. North American Car Corp. (NATX)	1.92
85. Northern Refrigerator Line, Inc. (NRC)	46.86
86. National Tank Car Co. (NTCX)	.18
87. Pure Oil Co. (POX)	1.17
88. Peerless Transit Line (PTLX)	.72
89. Pennsylvania Tank Line (PTX)	.21
90. Panhandle Refining Co. (PHRX)	1.44
91. Producers & Refiners Corp. (PARX)	.09
92. Shell Petroleum Corp. (RPX)	6.39
93. Standard Transit Co. (STCX)	3.60
94. Sinclair Refining Co. (SDRX)	1.86
95. Shippers Car Line Corp. (SHPX)	.81
96. Tidal Refining Co. (TIDX)	1.44
97. Union Tank Car Co. (UTLX)	4.48
98. Universal Atlas Cement Co. (UPCX)	.57
99. Tidal-Western Oil Corp. (WROX)	1.62
100. Gulf States Corp. (WOAX)	.54
Total mileage	94.54
Total per diem	5,397.13
	5,491.67

74 COMPLAINANT'S EXHIBIT 36

Chicago North Shore & Milwaukee Railroad Company

Freight train movements selected from daily freight train reports for the last 10 days of September, 1930, and May 23, 1930

Date	Locomotive No.	Left	Number of cars in train		Arrived	Number of cars in train		Miles
			Loaded	Empty		Loaded	Empty	
September 21st	456	Rondout	6		Pettibone	6		3.95
"	456	Rondout	14	2	Pettibone	14	2	3.95
"	456	Pettibone	11		Racine	10		27.91
September 22nd	454-453	Racine "Y"	18	11	Pettibone	17	13	27.91
"	454-453	Pettibone	13	12	Six Mile		3	35.70
September 23rd	455	Rondout	28		Pettibone	28		3.95
"	455	Pettibone	4	1	Mundelein	4		9.68
September 24th	453-454	Racine "Y"	25	12	Pettibone	23	12	27.91
September 25th	455	Rondout	15	1	Pittibone	15	1	3.95
"	455	Great Lakes		4	Rondout		16	5.16
"	455	Mundelein	6	1	Rondout	6	1	5.73
September 26th	455	Pettibone	1	14	Rondout	1	14	3.95
"	455	Rondout	32		Pettibone	32		3.95
"	455	Mundelein	3	7	Pettibone	3		9.68
September 27th	455	Pettibone	10		Northfield	8	2	16.20
"	455	Dempster		6	Rondout		18	19.16
"	455	Rondout	8	2	Pettibone	8	2	3.95
September 28th	456	Rondout	21	6	Pettibone	21	6	3.95
"	456	Pettibone	10		Edison Ct	10		3.73
September 29th	456	Pettibone	2	9	Rondout	2	9	3.95
"	456	Rondout	4		Mundelein	10		5.73
"	456	Mundelein	20	1	Rondout	20	1	5.73
"	456	Rondout	15		Pettibone	15		3.95
September 30th	455	Pettibone	1	24	Oak Creek		3	40.33
"	455	Quarry	13	1	Pettibone	18	1	30.58
"	455	Pettibone	8	1	Rondout	8	1	3.95
May 23	456	Rondout	41	1	Pettibone	41	1	3.95

NOTE.—Sundays—Sept. 21st and 28th.

75 COMPLAINANT'S EXHIBIT 39

Chicago North Shore & Milwaukee Railroad Company

Statement of traffic department personnel and monthly salaries as of September 30, 1930

Name	Title	Headquarters	Rate
Roy Thompson	Traffic manager	Chicago	$500.00
C. H. Schildgen	Industrial agent	"	*310.00
C. G. Finnegan	Asst. " "	Milwaukee	*275.00
R. S. Amis	Gen'l. passenger agent	Chicago	325.00
Edmond F. Weber	Gen'l. freight agent	"	310.00
J. M. Michaels	Asst. gen'l. passenger agt.	"	300.00
T. F. Gnevo	" " " "	Milwaukee	300.00
Gorman Bennett	Asst. gen'l. freight agt	Chicago	325.00
F. J. Kelly	Frt. traffic rep	"	250.00
E. A. Stephens	" " "	"	250.00
D. F. Lyons	" " "	"	250.00
F. J. Devaney	" " "	"	200.00
C. G. Miles	" " "	Milwaukee	175.00
Wm. Lewellen	Pass. traffic rep	Chicago	200.00
F. J. Burkard	Div. freight agent	Milwaukee	275.00
J. T. Schomp	General agent	Chicago	250.00
H. R. Erickson	Traffic agent	Kenosha	200.00
H. C. Elliott	General agent	Chicago	200.00
P. J. Butler	Traffic agent	Waukegan	200.00
J. E. Stemper	City passenger agent	Milwaukee	175.00
H. J. Phillips	Chief clerk	Chicago	175.00
Ed. A. Dreis	Ass't. chief clerk	"	140.00
Mary Dunne	Ticket seller	"	175.00
Helen M. Daly	Dictaphone operator	"	125.00
Leota Thrasher	"	"	115.00
C. M. Hanlon	File clerk	"	140.00
Mary Grady	Stenographer	"	110.00
James E. Walsh	Typist	"	100.00
R. M. Zinnen	Chief clerk	Milwaukee	175.00
Mary Mergener	Stenographer	"	125.00

* Serves jointly for C., N. S. & M. R. R., Chicago, South Shore & South Bend R. R., and Chicago, Aurora & Elgin R. R., and salary prorated.

81 DEFENDANT'S EXHIBIT 6

Chicago North Shore and Milwaukee Railroad Company

Miles of line owned and operated December 31, 1930

Name of line and location	1st main track, No. bound	2nd main track, So. bound	Yard and other tracks	Total
ILLINOIS				
Line owned				
Main line: Laurel Ave., Wilmette, to State line	31.7748	31.7748	11.7247	75.2743
Skokie Valley line: Howard St., Chgo., to No. Chgo. Jct., No. Chgo.	26.2952	26.3104	16.1502	68.7558
Libertyville branch: Lake Bluff to Mundelein	8.8092	8.2259	4.1202	21.1553
Waukegan branch: No. Chgo. Jct., No. Chgo., to Waukegan Terminal	3.2940	3.0223	.8102	7.1265
Waukegan City line: All of Waukegan East line except tracks from No. Chgo. Jct. to Waukegan Terminal	4.1333	.....	.6665	4.7998
Total, owned in Illinois	74.3065	69.3334	33.4718	177.1117
Line operated				
Laurel Ave., Wilmette, to 63rd St., Chicago	24.8000	24.8000	0.2300	49.8300
Total, Illinois owned and operated	99.1065	94.1334	33.7018	226.9417
WISCONSIN				
Line owned				
Main line: State line to Harrison St., Milwaukee, and including Milwaukee Terminal	35.9213	35.3392	8.8159	80.0764
Line operated				
Harrison St. to 2nd & Grand Aves., Milwaukee	3.35356	3.3536	0.0910	6.7982
Total, Wisconsin owned and operated	39.2.49	38.6928	8.9069	86.8746
Grand total miles, owned and operated	138.3514	132.8262	42.6087	313.8163

OFFICE OF AUDITOR OF CAPITAL EXPENDITURES, *Jan. 8, 1931.*

Miles of line owned and operated December 31, 1930—Continued

82 OWNED

Location	1st main track, No. bound	2nd main track, So. bound	Yard and other tracks	Total
MAIN LINE, ILLINOIS				
Shore line:				
City of Evanston	7.2846	7.2846	0.4962	15.0654
New Trier Township	6.8645	6.8645	5.2750	19.0040
Deerfield Township	6.1501	6.1501	1.6903	13.9905
Total, Shore line	20.2992	20.2992	7.4615	48.0599
Skokie Valley line:				
City of Evanston	1.8217	1.8360	0.0757	3.7334
Niles Township	4.8632	4.8632	4.8326	14.5590
New Trier Township	2.4774	2.4774	3.0179	7.9727
Northfield Township	4.0068	4.0068	2.0389	10.0525
Deerfield Township	6.6900	6.6900	1.1908	14.5708
Shields Township	6.4361	6.4370	4.9943	17.8674
Total, Skokie Valley line	26.2952	26.3104	16.1502	68.7558
Main line:				
Waukegan Township	5.9967	5.9967	3.5200	15.5134
Benton Township	5.4789	5.4789	0.7432	11.7010
Total, main line	11.4756	11.4756	4.2632	27.2144
Total, Ill. main line	58.0700	58.0852	27.8749	144.0301
MAIN LINE, WISCONSIN				
Main line:				
Pleasant Prairie Twp	6.0628	6.0628	1.3994	13.5250
Somers Township	6.1431	6.1431	0.7430	13.0292
Mount Pleasant Twp	6.2227	6.2227	2.8312	15.2766
Caledonia Township	6.3962	6.3962	0.4883	13.2807
Oak Creek Township	6.4231	6.4231	0.3985	13.2447
Lake Township	4.6734	4.0913	2.4231	11.1878
Milwaukee Terminal			0.5324	0.5324
Total, Wis. main line	35.9213	35.3392	8.8159	80.0764
Total, main-line miles	93.9913	93.4244	36.6908	224.1065
Libertyville line:				
Shields Township	2.5047	2.2695	0.7052	5.4794
Libertyville Township	6.3045	5.9564	3.4150	15.6759
Total, Libertyville line	8.8092	8.2259	4.1202	21.1553
Waukegan City line:				
Shields Township	0.7771	0.7771	0.4167	1.9709
Waukegan Township	6.6502	2.2452	1.0600	9.9554
Total, Waukegan line	7.4273	3.0223	1.4767	11.9263
Total, Branch line miles	16.2365	11.2482	5.5969	33.0816
Total miles owned	110.2278	104.6726	42.2877	257.1881

OPERATED

LINE OPERATED				
WISCONSIN				
Harrison St. to 2nd & Grand Aves., Milwaukee	3.3536	3.3536	0.0910	6.7982
ILLINOIS				
Laurel Ave., Wilmette, to 63rd St., Chicago	24.8000	24.8000	0.2300	49.8300
Total miles operated	28.1536	28.1536	0.3210	56.6282
Grand total miles owned and operated	138.3814	132.8262	42.6087	313.8163

83 **Chicago North Shore and Milwaukee Railroad Company**

Statement of route mileage operated in city streets along or in the pavement, 5–19–31

	Between-city service in city street, track zone paved	Between-city service in city street, no pavement	Between-city service in city street, adjacent to pavement	City and between-city service in city streets, adjacent to pavement	City and between-city service in city streets, trk. zone paved	City service exclusively in paved streets
Chicago, Ill		36,485′				
Wilmette, Ill	4,218′	894′				
Kenilworth, Ill	646′	700′				
Winnetka, Ill			1,565′			
Hubbard Woods, Ill	1,166′					
Glencoe, Ill			5,112′			
Highland Pk., Ill	602′		2,033′			
Lake Forest, Ill			1,425′			
North Chgo., Ill			1,325′	2,580′		
Waukegan, Ill	1,426′				6,300′	21,836′
Mundelein, Ill			1,155′			
Milwaukee, Wis					14,309′	3,379′
Total feet	8,058′	38,079′	12,615′	2,580′	20,609′	25,215′
Total miles	1.526	7.213	2.389	0.489	3.90	4.77

Total route miles operated in city streets ..... 20.29 miles— 14.66 per cent.
Total route miles operated on private R. of W .. 118.09 " — 85.34 " "
Total route miles operated ..... 138.38 " —100. " "

84 **DEFENDANT'S EXHIBIT No. 22**

Chicago North Shore and Milwaukee Railroad Company

Statement of route mileage on which it is impossible to handle freight on account of franchise restrictions

Total route mileage operated	138.38
Total route milage on which freight can be handled	106.91
Total route mileage on which freight can not be handled due to franchise restrictions and clearances	31.47
% of restrictions and clearance limitation mileage to total route mileage	22.73%

85 [Omitted.]

86 **In United States District Court, Northern District of Illinois, Eastern Division**

No. 10067

UNITED STATES OF AMERICA

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

Findings of fact and conclusions of law

March 24, 1932

The above-entitled suit coming on to be heard, and the court having heard the evidence and arguments of counsel, and briefs having been filed, and the court being advised in the premises, now finds as

FINDINGS OF FACT

(1) That this suit was brought and the prayer seeks only to enjoin and restrain the respondent in the future from issuing any capital stock, bonds, or other evidence of indebtedness, collectively termed "securities," and from assuming any obligations or liability as guarantor, endorser, surety, or otherwise, in respect of the securities of any other person or corporation unless respondent shall have first applied for and obtained the approval and appropriate order from the Interstate Commerce Commission.

(2) CORPORATE HISTORY OF CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY:

The Chicago North Shore and Milwaukee Railroad Company, and the predecessor corporation, owning and operating, subsequent to March 1, 1920, the properties now owned and operated by it, is and were corporations organized, chartered, and existing under and by virtue of the Statutes of the State of Illinois, sometimes described as the General Railroad Laws of the State of Illinois, and more particularly described as "An act to provide for the incorporation of associations that may be recognized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so recognized, and authorizing the same and all railroad companies of the State to own and hold the stock and securities of railroad companies of other States owning a connecting line," being chapter 114 of Cahill's 1921 Illinois Revised Statutes.

(3) There are but two statutory enactments in Illinois under which rail carriers may be organized; one is the general railroad act and the other is the general incorporation act. The general incorporation act is commonly used for the organization of street railways and under it the street railway has limited powers of eminent domain. Practically all rail carriers, save street railways, organized in Illinois are organized under the so-called general railroad
87 act because of the very limited powers of eminent domain given corporations organized under the general incorporation act. The Chicago Rapid Transit Company, which operates the intramural city service over the elevated structure in Chicago, is incorporated under the general railroad act of Illinois.

(4) The Bluff City Electric Street Railway Company, a street railroad, was the original company out of which the properties of the respondent developed. The Bluff City line was in existence prior to 1905. On July 1, 1916, the receiver of the Chicago and Milwaukee Electric Railroad Company of Illinois and the Chicago and Milwaukee Electric Railroad Company of Wisconsin sold at receiver's sale these two properties to the Chicago North Shore and Milwaukee Railroad. As the result of a later reorganization, at 12.01 a. m. on July 1, 1923, the railroad property of that company was conveyed to the Chicago North Shore and Milwaukee Railroad Company. On October 6, 1924, this latter company was consolidated

with the Chicago North Shore and Northern Railroad, an Illinois intrastate railway, under the corporate name, Chicago North Shore and Milwaukee Railroad Company, the respondent, which has owned and operated the properties at all times since then.

(5) Type of construction of tracks, bridges, roadbed, and other physical properties of the Chicago North Shore and Milwaukee Railroad Company:

1. Description of respondent's line:

(a) The respondent operates a high-speed electrified railroad between Chicago, Illinois, and Milwaukee, Wisconsin, serving States with a total population of approximately four million. The main terminals are in Chicago and Milwaukee, with branch-line terminals in the cities of Waukegan, Illinois, and Mundelein, Illinois.

(b) The operation in Chicago is over the elevated tracks of the Chicago Rapid Transit Company from 63rd and Dorchester Streets on the south side of Chicago, northerly through the Loop district, where the main Chicago passenger terminal is located, to a point at Leland and Wilson Avenues on the north side of Chicago, a distance of approximately 16 miles; thence northerly through Chicago and Evanston to Wilmette, a distance of approximately eight miles over elevated, dirt-fill tracks, leased from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and jointly used with the Rapid Transit Company.

(c) The so-called "Shore line" route continues north from Linden Avenue in Wilmette through Kenilworth, Winnetka, Olencoe, Highland Park, Highwood, Lake Forest, Lake Bluff, and North Chicago Junction, where it joins with the Skokie Valley line to Zion City and the State line, a distance of 31.77 miles.

(d) The "Skokie Valley line" departs from the Shore line route at Howard Street, the north city limit of Chicago, and runs west about three miles to Niles Center, and thence northerly, paralleling the Shore line, to a junction with the Shore line at North Chicago Junction, a distance of 36.29 miles.

88 (e) From the State line the road continues north via Kenosha and Racine to Harrison Street, Milwaukee, a distance of 35.92 miles. From this point the operation is through the streets, over the tracks of the Chicago and Milwaukee Electric Railway Company, which company is owned by the respondent, a distance of 2.67 miles. Street cars also operate over a small portion of the line from Harrison Street to Oklahoma Boulevard, and such operation is under an ordinance authorizing a predecessor of respondent to "operate its interurban cars" over such tracks. Such operation is on the streets in common with vehicular traffic and is controlled in part by "stop and go" lights.

(f) The "Libertyville branch" extends from Lake Bluff on the Shore line to Rondout, Libertyville, and Mundelein, a distance of 8.8 miles.

(g) The "Waukegan branch" extends from North Chicago Junction into the city of Waukegan, a distance of 3.29 miles. Respondent

performs all of the street-car service in Waukegan. Approximately 12 cars are used in this service. The Chicago-Waukegan interurban express trains use the street-car tracks in Waukegan. The Waukegan street cars use the main-line tracks south from Waukegan to Great Lakes Naval Training Station in common with the respondent's interurban express trains. The operation of the street cars and of the Chicago-Waukegan interurban express trains in Waukegan is in common with other vehicular traffic on the streets. Passengers on the interurban trains of respondent to and from Waukegan are given free transfers which permit them to ride to any point on the street-car system within Waukegan.

(h) The total route miles of main line owned and operated by the respondent is 138.38. The total miles of second track is 132.82. The total miles of yard and other track is 42.60. The total number of miles of all track is 313.81. The total route miles of track operated in city streets is 20.229, which is 14.66 per cent of the total route miles of track. Respondent operates on many of the city streets in common with street cars and vehicular traffic.

2. Tracks and rights of way:

(a) The tracks of the respondent are standard gauge, the owned line for train operation being all double-track with the exception of about 0.6 mile just south of Milwaukee and about 0.6 of a mile on the Libertyville or Mundelein branch.

(b) The operation over the lines of the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is double-track and multiple track. The operation in Milwaukee is double-track.

(c) The rights of way and tracks of the Chicago and North Western Railway Company parallel the respondent's right of way and tracks, the tracks of these two carriers reaching the same cities between Chicago and Milwaukee.

89 (d) Of the respondent's total owned tracks, 2.4 miles are laid in paved streets; 0.197 miles are laid in unpaved portion of streets; 2.8 miles are laid in unpaved street area, the track zone not being used for street purposes. In Milwaukee the respondent's passenger trains move over 2.6 miles of track in streets, the tracks being owned by the Chicago and Milwaukee Electric Railway Company, which company in turn is owned by the respondent. These tracks are used for street-railway service.

(e) In Chicago the respondent's passenger and merchandise despatch trains operate over tracks owned by the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, under trackage leases or agreements with those carriers. The miles of track included in this operation, respectively, are: First main track, 16.97 and 7.83; total trackage so operated, 33.94 and 15.89, or a total of 39.38 miles of track not owned but used by the respondent under lease or agreement with those carriers. The operation over the tracks of the Chicago Rapid Transit Company is under a long-term lease.

(f) Respondent owns its right of way from Wilmette to Milwaukee, except for short distances, aggregating about three miles, in a few municipalities through which it runs on public thoroughfares. It owns all of the right of way of the Skokie Valley line.

(g) The respondent has more than one-half mile of right of way in the Fort Sheridan Military Reservation, which it enjoys under perpetual easement granted by Congress. (See 42 Stat. L. 622–623.)

(h) From Waukegan, north to Milwaukee, the right of way averages about 100 feet in width. South from North Chicago to the connection with the line of the Chicago Rapid Transit Company the right of way averages in width from 25 to 100 feet, the greater part being about 50 feet.

(i) The right of way on the Skokie Valley line is wide enough to accommodate a four-track line, part of it being used for the steel towers carrying the high-tension transmission line of the Public Service Company of Northern Illinois.

(j) Respondent has acquired part of its right of way through the exercise of the power of eminent domain.

(k) The respondent's roadways and tracks in many places follow the contour of the ground. Its track consists of ties and steel rails of varying weights and types. In many places it uses the high T and girder type rail designed especially for use in paved streets. It also uses frogs and switches designed for paved city track construction. Special steel ties are used for track in pavement.

(l) Respondent has many curves in its main-line tracks as well as shop and yard tracks of 100-foot radius or less. This curvature in tracks is common to electric railways which must operate around street corners. Trains of steam railroads could not operate around such curves.

90 3. Bridges:

(a) Respondent's bridges are built according to steam railway specifications and standards and are suitable for the operation of standard freight cars of steam railroads.

(b) On the west side, from North Chicago Junction to Milwaukee, the bridges are built according to Cooper's E–40 specifications, and have a standard load capacity sufficient to support two locomotives weighing 146 tons each with the same distance between the front and rear axle and stipulated or uniform load of 4,000 pounds per foot.

(c) The bridges on the "Shore line" route between Chicago and North Chicago Junction, which is mainly a passenger line, are built according to Cooper's E–30 specifications, and will support two locomotives weighing 106 tons each and a load of 3,000 pounds per lineal foot.

(d) The carrying strength or load capacity of the bridges on its owned main line will support the average steam railroad train.

4. Roadbed:

(a) The grades on the "Shore line" of the respondent generally follow the topography of the ground, being less than 0.4 of one per

cent on most of the tracks. The roadbed of the "Shore line" is suitable for the operation over it of standard freight cars of steam railroads.

(b) Grades as high as 7 per cent are encountered in the main line track of respondent. The Skokie Valley line connects at Howard Street with the Shore line and has a grade of 3 per cent at that point. It also has a grade of 1.6 over a viaduct or bridge that crosses the highway near the sanitary district plant. Respondent uses a short temporary crossover track during construction work in paved streets. All main line trains operate over these temporary crossover tracks. It would be impossible for steam line trains to use this type of crossover track.

(c) The roadbed is ballasted with rock, slag, gravel, and cinder ballast. More than three-fourths of the Skokie Valley line is rock ballasted. The ballast and crossties are the same as those ordinarily used by steam roads. Except for short distances, where steel ties or combination steel and wood ties are necessary, the ties used are oak, cedar, and pine.

(d) Respondent's signals, switches, and crossing-protection devices are similar to those used on steam railways generally, the respondent's line being equipped with the most modern railroad block signal systems.

5. Interchange track connections:

The tracks of the respondent are physically connected with the tracks of four steam railroads at thirteen points on its line and with three electric railroads at three points on its line. Carload
91 freight shipments can be and are interchanged with steam railroads, without breaking bulk, at eight different points. The respondent has interchange track connections with the Soo Line, Elgin, Joliet, and Eastern, the Chicago and North Western, and the Chicago, Milwaukee, St. Paul, and Pacific, all steam railroads. The total capacity of the respondent's interchange tracks at these interchange points is aproximately 365 freight cars.

6. Industry tracks:

(a) Respondent has 108 industry, team, and switch tracks at 37 stations on its line, which serve about 40 different types of industries and the general public. The respondent constructed more than three miles of sidetracks into industrial yards to increase its facilities for handling carload freight.

(b) In 1930 the respondent had 12 new industries located on its line. These industries are engaged in manufacturing or handling of coal, lumber, and building materials.

(c) The largest industrial or team-track facilities are at Waukegan, where the respondent has 14 industry or team tracks with a capacity of 209 freight cars or 155 passenger cars. Similar tracks at North Chicago will accommodate 109 cars; at Racine Quarry, 145 cars; at Crawford Avenue, 174 cars; at Kostner Avenue, 111 cars; and at Liberty Lake, 127 cars.

(d) The total capacity of respondent's industry or team tracks is 1,801 freight cars or 1,364 passenger cars.

7. Yards and terminals:

(a) Respondent has 19 passing tracks with lengths varying from 300 feet to 1,900 feet, many of which are used as team or storage tracks, as well as for train passing.

(b) The respondent has a freight classification yard at Pettibone which it used for classifying cars of inbound and outbound freight and making up trains for further movement. This yard consists of 11 tracks and has a capacity of 161 freight cars.

8. Passenger stations and freight depots:

(a) The respondent maintains on its entire system of railroad 224 stations or stopping points at which it receives and discharges passengers. At 51 of these stations there is a station agent who sells passenger tickets and performs other duties customarily performed by station agents. At 96 of these points the respondent maintains shelters and platforms. At 35 of these points the respondent maintains platforms only. At 42 points certain of the respondent's trains stop at streets or highways, where no facilities or platforms are provided.

(b) The main pasenger station of respondent in Chicago is in a store building having a front width of 25 feet on Wabash Avenue between Adams Street and Jackson Boulevard. This station is connected with the elevated structure of the Chicago Rapid Transit Company by a bridge leading to the elevated platform
92 above the sidewalk. All stations on the elevated structure of the Chicago Rapid Transit Company in Chicago used by the respondent are used in common with the Rapid Transit Company. Respondent conducts no freight business at any of these stations. Several stations used by respondent on its owned line outside of Chicago are in store buildi gs adjacent to track on city streets.

(c) Two stations, with t cket agents, are maintained at Wilmette, Winnetka, and Island Park. At Ravinia the respondent has a station consisting of a good type of small modern brick building, with platforms and canopies. At Central Avenue the respondent's station is separated from the railway track by a portion of paved street and is located in a store building, part of which the respondent leases. It has the ordinary station facilities. At Highwood the respondent has a frame building with ticket agent, platforms, ticket booth, and canopies partly covering the platform. At Lake Forest the respondent maintains a very fine brick and stone station, being equipped with modern facilities. At Zion the respondent maintains a commodious brick station, with a large waiting room for men, a large waiting room for women, and with long platforms on both sides of its track. At Kenosha the respondent has a modern, up-to-date, brick, concrete, and stucco station building with a large waiting room, toilet facilities and rest rooms, and with brick and concrete platforms with canopy over a portion of the platform. On the Skokie Valley line the respondent maintains stations at nine points

which are combined depots and residences for the station or ticket agents, the buildings being five-room bungalows with one additional room adjoining the track being used for station purposes. The employees of the station use the bungalows as dwellings, for which no rent is charged by the respondent.

(d) Freight depots, or buildings used exclusively for receiving and delivering freight, are maintained by the respondent at several of its stations. At Milwaukee there is a freight station of brick construction with sheltered platform to accommodate loading and unloading to or from vehicles. At Evanston there is a freight depot of brick construction used jointly with the Chicago, Milwaukee, St. Paul and Pacific Railroad.

(e) At a number of points on the respondent's line freight stations are maintained to accommodate the respondent's merchandise despatch or less-than-carload freight service. To accommodate this same service the respondent maintains in Chicago a number of receiving stations. A considerable portion of the merchandise despatch traffic is handled in Chicago at the Montrose Avenue station.

(f) The respondent maintains loading and unloading facilities in Chicago, Milwaukee and Racine for the accommodation of its ferry truck service.

9. Offices and shops:

(a) The executive offices of the respondent are located in the Commonwealth Edison Building, 72 West Adams Street, Chicago, Illinois. Its general operating offices are located at Highwood, Illinois.

93 (b) Respondent has repair shops adequate for the maintenance and repair of its rolling stock, its general repair shops being located at Highwood, Illinois.

(c) The 114 freight cars of respondent which are interchangeable with steam railroads are kept in repair at respondent's repair shop at Pettibone yard.

(d) Respondent has not found it necessary to have repairs, either to locomotives or to passenger or freight cars, made at outside shops, but has been able to make all necessary repairs at its own shops.

10. Electrical transmission line:

(a) On the Skokie Valley line overhead power is conveyed by catenary-type trolley lines supported on double standards, permitting high-speed operation.

(b) On the Shore line the trolley wire is suspended from and between wooden poles, and is about 18 feet above the track.

(c) On the tracks of the Chicago Rapid Transit Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad, and on respondent's tracks for about two miles between Howard Street, in Chicago, and Crawford Avenue, in Niles Center, the current is fed by the third-rail system. A portion of the line of the third rail north of Howard Street, has an overhead trolley, in addition to the third rail, for use in connection with the switching of freight for the Chicago, Milwaukee, St. Paul and Pacific Railroad.

(d) Respondent uses 600 volts, direct current, for its power. The electric power of 600 volts used by respondent is substantially less than the voltage used on most electrified sections of steam railroads. The use of higher voltage than 600 on lines that operate over paved streets, as does the respondent, would create a hazardous condition for the public in the event the line broke and the wire dropped.

(e) Six hundred volts, direct current, is sufficient to haul respondent's loaded equipment, and is the same voltage now used by the Pennsylvania Railroad for its entrance into and terminal operations at New York City. On electrified portions of steam lines other carriers use from 1,500 to 11,500 volts, and the Pennsylvania Railroad is changing to 11,000 volts.

11. Investment in road and equipment:

Respondent's investment in road and equipment on December 31, 1930, was $42,438,676.67.

(6) Rolling Stock and Other Mobile Equipment.

1. Locomotives:

(a) Respondent owns a total of 7 electric locomotives. Two of them are electric storage battery locomotives; 5 of them are operated by power transmitted from the trolley wire. Two of these locomotives will haul 1,200 tons per train; 3 will haul
94 600 tons per train, and 2 will haul 400 tons per train. Steam railroads haul several thousand tons in a train. These locomotives weigh 70, 60, and 50 tons, respectively. The lightest weight of electric locomotive used on electrified section of steam railroads shown by evidence is 100 tons, and the heaviest weight as much as 288 tons.

(b) The respondent has, within the past five years, used steam locomotives then owned by it for hauling revenue freight.

2. Merchandise despatch cars:

(a) Respondent uses a baggage type of passenger car in transporting its less-than-carload merchandise despatch freight. Most of these cars are equipped with motors. Some are trailers. The longest car is 50′ 5″. The widest car is 9′ 5½″. The baggage type cars which are wider than 9 feet are not used in the operation into the cities of Chicago and Milwaukee, as a car greater than 9 feet in width can not operate on the tracks used by respondent in either of these cities. The capacity of these cars is from 20,000 to 35,000 pounds. The average capacity of steam railroad freight cars is about 80,000 pounds. The maximum capacity is as high as 145,000 pounds.

(b) Respondent also owns and uses refrigerator cars, similar to the motor merchandise despatch cars.

3. Freight equipment:

(a) Respondent owns 206 freight cars. Of that number 71 are dump cars, 2 are tank cars used for weed killing, 2 are refrigerator cars eqiupped with electric refrigeration not used to carry freight. The dump cars are occasionally used in commercial service for hauling sand, gravel, and stone where necessary to dump such material

along the side of the track or off trestles. Respondent owns 114 freight cars which can be interchanged with steam railroads. The other freight cars are too light in construction to be accepted by steam railroads.

The Chicago, Milwaukee, St. Paul and Pacific Railroad owns an average of 6.29 freight cars per mile of road. The Chicago and Northwestern owns an average of 8.05 freight cars per mile of road. The Minneapolis, St. Paul and Sault Ste. Marie owns an average of 5.06 freight cars per mile of road. Class 1 steam railroads in the United States own an average of 9.7 freight cars per mile of road. The North Shore owns an average of 1.49 freight cars per mile of road.

(b) One hundred and fourteen of respondent's revenue freight cars are interchangeable with steam railroads. These cars have no electrical equipment and are exactly the same as steam railroad freight cars, being identical in equipment, brakes, safety appliances, automatic couplers, and other devices.

(c) Respondent's freight cars have capacities of from 30,000 to 100,000 pounds each. It operates 36 gondolas with capacities of 100,000 pounds each; 52 gondolas with capacities of 80,000 pounds each, and its flat cars will carry maximum loads up to 80,000 pounds each. Eight of the respondent's 10 box cars will load 60,000 pounds each and the remaining two have a capacity of 45,000 pounds each.

95 4. Passenger equipment:

(a) Respondent's passenger equipment consists of 182 units, of which 150 are equipped with motors and 32 are operated as trailers. This equipment includes nine dining cars and five observation-parlor cars.

(b) Respondent's passenger equipment is not interchangeable with steam railroads because of appurtenances for electrical operation and certain departures from the Master Car Builders' Standards.

(c) Of respondent's 182 passenger cars, 90 weigh 100,000 pounds or more and only nine weigh less than 75,000 pounds.

(d) Four of respondent's observation-parlor cars will seat 31 passengers each and the fifth will seat 16 passengers. Its ordinary passenger cars will seat 30 passengers each.

(e) Most of the passenger and baggage car equipment is motorized. A few passenger cars have control apparatus without motors so that they may be placed ahead of motor cars in trains. The widest passenger car used by respondent is 9 feet. The longest car is 56′ ¾″. The narrowest of steam railroad cars shown of record is 10 feet in width and the shortest in length is 72′ 7½″. The passenger equipment of respondent has 4-wheel trucks. The passenger equipment of steam railroads in general use have 6-wheel trucks. The curvatures on the line of respondent are too sharp to permit the operation of cars with 6-wheel trucks. Radial draw bars are used on respondent's cars to permit trains to operate around short curves.

More than 40 passenger cars of respondent are street cars which are used exclusively in street-car operation.

5. Ferry truck or container cars:

(a) The respondent's equipment includes a number of "ferry truck" or container cars, which are hauled from the shipper to the respondent's freight depots by tractors and then carried over respondent's line mounted two to a freight car.

(b) These ferry trucks or container cars are similar to those of the Chicago and North Western Railway and are used for the same purpose.

(7) PUBLICATION OF FREIGHT RATES AND PASSENGER FARES, ANALYSIS OF TRAFFIC HANDLED, AND METHOD OF OPERATION.

1. Tariffs, powers of attorney, and concurrences:

(a) Respondent has on file with the Interstate Commerce Commission a total of 221 effective powers of attorney and concurrences issued by it. It publishes 16 local freight tariffs and participates as initial carrier in 206 freight tariffs, and as a delivering or intermediate carrier in more than 800 freight tariffs, thus providing freight rates in conjunction with steam railroads to and from practically every State in the United States, as well as to points in Canada and Mexico.

96 (b) Through railroad and Pullman tickets are sold at respondent's stations to any part of the United States, Canada, and Mexico.

(c) Published tariffs on file with the Interstate Commerce Commission permit the respondent to sell passenger tickets for trips around the world.

(d) Respondent publishes its freight and passenger tariffs through the same tariff publishing agents used by all steam railroads, and those agents publish many of respondent's rates for the steam roads and for respondent in the same joint tariffs.

(e) In assessing its local passenger fares the respondent uses the same per mile basis as used by all steam railroads, namely, 3.6 cents per mile.

2. Passenger service:

(a) Respondent operates about 40 fast through or limited passenger trains daily between downtown Chicago and downtown Milwaukee, there being 20 of these fast or through trains in each direction daily, in addition to the local and "commuter" trains. These limited trains operate over the Skokie Valley line, with five cars each, drawn by self-propelled units. The running time of these fast trains is one hour and forty-five minutes, equalling the fastest trains of the Chicago and North Western Railway Company, which operates 15 through trains daily between Chicago and Milwaukee.

(b) The respondent and the Chicago and North Western Railway are in direct competition with each other in their through or fast passenger service, their limited service to Waukegan, and their suburban and "commuter" service.

(c) In connection with its passenger service, the respondent operates nine dining cars having seating capacities of 22 to 24 persons per car. These dining cars are used in the through Chicago-Milwaukee morning, noon, and evening trains, and were included as part of respondent's service to compete in passenger service with the Chicago and North Western Railway and the Chicago, Milwaukee, St. Paul and Pacific Railroad between Chicago and Milwaukee.

(d) In addition to its Chicago-Milwaukee limited and local service, the respondent operates a fast or limited service from Chicago to Waukegan on its "Shore line," with stops only at the main stations, and the local service between the same points.

(e) A fast and local service, totalling 16 trains daily, is maintained on the Libertyville branch from Mundelein to Lake Bluff, where connection is made with the "Shore line" trains.

(f) Respondent publishes in its train time schedules connections with the trains of all steam lines, motor bus, and electric lines at both Chicago and Milwaukee, including all the transcontinental roads, both east and west.

97 (g) The fast passenger trains of the respondent running from Milwaukee make convenient connections in Chicago with the Stout Air Lines operating to Detroit, Cleveland, and other eastern cities; also with the Universal Air Lines System to St. Louis and Kansas City; and with the Embry-Riddle Company to Indianapolis and Cincinnati.

(h) Respondent's passenger service is rendered under regulations and fares filed with and subject to the jurisdiction of the Interstate Commerce Commission.

(i) In Milwaukee and Waukegan street-car service is furnished by the respondent, this service being separate and distinct from its other passenger service. Different equipment is used and special State tariffs applied to the local fares charged.

(j) Passengers boarding a limited train without a ticket and paying cash fares are given receipts similar to those used by steam railroads, and if a train is boarded at an agency station, but without a ticket, the passenger is assesed an extra or "penalty" fare, as steam railroads do in such circumstances.

(k) The passenger service of the respondent is performed in comparatively small train units ranging from a single car to 4 or 5 cars per train. There are no single car trains operated by either of the paralleling steam railroads, the Chicago and North Western or the Chicago, Milwaukee, St. Paul and Pacific. Respondent operates 40 passenger trains daily between Chicago and Milwaukee. A substantial part of the main line passenger service of respondent is performed over tracks laid in city streets. The main line trains of the respondent into and out of Chicago run over the elevated structure of the Chicago Rapid Transit Company. The speed of trains of respondent is rigidly restricted at many places by State, city, and village authority. Arbitrary stops are also required by such authority.

Respondent has interline ticket arrangements with steam railroads. In September, 1930, less than 4 per cent of the total passenger revenue was derived from interline passenger business and the remaining 96 per cent from passenger business local to respondent's line.

3. Merchandise despatch service:

The merchandise despatch service is performed by respondent in baggage type cars, most of which are motorized. This service is handled in trains consisting of one or two cars with a total maximum of 5 cars to the train. Respondent maintains several off-line freight stations within Chicago, at which shippers may deliver merchandise freight. The freight from these stations is transported to the rail station in specially built motor trucks. This is called the ferry truck service. The revenue derived from the merchandise despatch service exceeds the revenue derived from all carload freight handled in freight equipment which is interchanged with steam railroads. More than 10 per cent of the total tons of freight handled by respondent is the merchandise despatch or less-than-carload freight.

98 4. Carload freight service:

(a) It is impossible for respondent to handle carload freight in standard railroad freight equipment on 31.47 route miles of track. This is 22.73 per cent of the total route mileage of respondent. Such impossibility is due to clearance conditions and franchise restrictions. Respondent has no interchange track with any steam railroad at Milwaukee or at Chicago, its two principal terminals. The nearest interchange track to Milwaukee with a steam railroad is at Racine, Wisconsin, about 20 miles distant. No freight cars containing less-than-carload freight are interchanged with steam railroads. Respondent has no reciprocal switching arrangement with a steam railroad at either Chicago or Milwaukee, or at any point except Racine, where it has switching arrangement with one steam railroad.

(b) In 1930 the respondent handled approximately 27,000 carloads of freight traffic, 23,0000 or 87 per cent of which were interchanged with connecting steam railroads.

(c) During the month of September, 1930, carload freight traffic was handled by the respondent in cars interchanged with 69 different steam railroads and 31 different private car companies.

5. Methods of operation:

(a) The respondent operates its trains under train rules substantially similar to the Standard Code of Train Rules of the American Railway Association. Its trains are operated under train orders, clearance cards, "meet" orders, changes in orders, rules as to superior and inferior trains, and in many other details as are trains of steam roads. Respondent's train despatching is done by telephone.

(b) Respondent serves industries directly from its line and industrial tracks. These industries receive and load solid cars from and to distant break-bulk points, which are picked up and given line-haul service. The incoming or "interline" freight and distant

points comes in by steam railroad connections of the respondent and is distributed by respondent.

(c) Respondent's methods of business solicitation, its membership in tariff organizations, and in tariffs published and concurred in are national and international in scope.

(d) Respondent's bills of lading, waybills, and interline waybills are the same as those used on steam railroads generally.

(e) Respondent is an associate member of the American Railway Association, a member of the Western Passenger Association, a member of the Bureau for the Safe Transportation of Explosives, and a member of the Western Weighing and Inspection Bureau. These are all regular steam railroad organizations.

(f) Respondent is a subscriber to the Code of Car Service Rules, the Code of Per Diem Rules, the Car Service and Per Diem Rules Agreement of the American Railway Association, the Master Car Builders' Rules, the Interchange Agreement of the American Railway Association, the Official List of Open and Prepay Stations, and the Consolidated Freight Classifications, all being rules entered into and promulgated for steam railroads generally.

99 (g) The track and roadbed of the respondent is maintained by section gangs, the foremen of which are housed in respondent's specially constructed building. The respondent maintains roadway maintenance equipment, consisting of gang or track inspection cars, hand cars, derrick cars, etc.

6. Traffic and revenue:

(a) The passenger fares of the respondent are regulated by and are subject to the jurisdiction of the Interstate Commerce Commission.

(b) For the year 1930 the total freight and express revenues of the respondent were $1,384,547.58.

(c) The classification of commodities prescribed by the Interstate Commerce Commission for compiling freight statistics for steam railroads includes 157 commodities. During the years 1929 and 1930 the respondent did not handle 56 of these commodities. The steam railroads in the same territory handled substantially all of these commodities. Respondent handled practically no livestock, no grain, packing-house products, poultry, or eggs. Respondent has no grain elevators or stockyards on its lines.

Respondent derives 78 per cent of its total revenue from passenger service. Class I steam railroads for the United States derive about 14.7 per cent of their total revenues from passenger service. Respondent derives 22 per cent of its total revenue from freight service, of which the greater part is derived from merchandise despatch service performed in the baggage type of cars. Class I steam railroads derive 76.6 per cent of their revenue from freight traffic. Respondent derives 8.47 per cent of its total revenues from the transportation of interline freight. Class I steam railroads derived more than 65.14

per cent of their total revenues from the transportation of interline freight in 1928.

7. Corporate organization:

The respondent has a corporate set-up similar to steam railroads, having a departmental arrangement consisting of an executive department, operating department, traffic department, law department, and medical department.

Respondent publishes tariffs by which it maintains through routes and joint rates with steam railroads. The law and tariff regulations of the Interstate Commerce Commission require the publication and filing of tariffs by all common carriers by railroad subject to the interstate commerce act.

Exhibits and evidence of record which correctly portray the facts show that 112 electric railways filed tariffs with the Interstate Commerce Commission, which published freight rates applicable locally to those railroads, and that of those railroads 64 participated jointly with steam railroads in interline tariff and 42 participated jointly in interline tariffs with other electric railroads during the year 1919. The Spokane Inland Empire R. R. Company, an electric line, maintained tariffs in 1911 in which it participated generally in
100 interline freight traffic with steam railroads between points throughout the United States. The Southwest Missouri Railroad Company during the years 1927 and 1928 participated generally in interline freight traffic with steam railroads by means of published tariffs.

Respondent operates through a number of cities and towns under rights granted by franchises or ordinances. These restrictions, prohibitions, and obligations are many and varied. In all but 2 of 14 towns through which respondent operates under franchises the operation must be by electricity. In all but 3 such towns steam operation is prohibited. In 5 safety stops are required. In 8 respondent must pave the streets between its tracks. In 7 respondent must stop at street intersections. In 9 respondent must light streets and crossings. In 4 respondent must remove snow. In 2 respondent must sprinkle the streets. In 6 freight operation is prohibited. In 5 respondent must carry policemen and firemen free of charge.

Respondent is required to pay a license fee to the city of Chicago of $50.00 annually for the operation of each car over the elevated structure of the Chicago Rapid Transit Company in Chicago and to keep this license posted within the car. Respondent may, under an ordinance recently enacted by the city council of Chicago and adopted by the people in a referendum vote, operate its trains in the new intracity subway transportation to be constructed within the city of Chicago.

Since July, 1916, when the Chicago North Shore & Milwaukee Railroad, the immediate predecessor of respondent, acquired the

properties, the respondent and predecessors have issued securities aggregating $71,327,200 par value. Of that total, $9,664,600 were issued by the predecessor company prior to March 1, 1920, and the remainder have been issued since that date. All of these securities were issued upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. There were outstanding in the hands of the public as of April 30, 1931, a total of $42,935,608.07 par value of securities issued by respondent and its predecessors. Of that amount, $4,000,000 in securities were issued prior to March 1, 1920, and $38,935,608.07 were issued since that date. There is in the treasury of respondent or pledged under the first and refunding mortgages a total of $9,291,800 par value of securities. In December, 1930, $2,500,000 par value of securities were issued by respondent upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. All securities issued by respondent since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual report of respondent filed with that commission. This report requires to be shown, and the respondent has shown, that the securities therein reported were issued under the authority and with the approval of the regulating commissions of Illinois and Wisconsin.

Since March 1, 1920, more than $239,000,000 par value of securities have been issued by electric railroads reporting to the Interstate Commerce Commission other than respondent without the approval or authority of the Interstate Commerce Commission.

101 The Interstate Commerce Commission has prescribed a uniform system of accounts for electric railways, which governs the accounting system of respondent. That commission prescribes a different and more comprehensive classification of accounts for use by steam railroads. In March, 1913, Congress enacted the valuation act, section 19a, of the interstate commerce act, 37 Stat. L. 701, which requires the commission to ascertain and report the value of all property owned or used by every common carrier subject to the provisions of the act. The property of the respondent has not been valued by the commission. The commission has not reported the value of any independently operated electric railroad. The commission has made tentative valuations or final valuations of the property of all steam railroads, subject to the interstate commerce act.

Respondent operates an electric railroad which is engaged in transporting State and interstate commerce between the urban communities of Chicago, Illinois, and Milwaukee, Wisconsin, and intermediate points in Wisconsin and Illinois. Respondent is not owned or controlled by any steam railroad system of transportation. It is not operated as a part of any steam railroad system of transportation. Respondent performs a street-car service, a suburban service, and an interurban service.

Since its organization respondent has been given the status of an interurban electric railway by official acts of construction by the Railroad Commission of Wisconsin, the State regulating body of Wisconsin, and by the Illinois Commerce Commission, the State regulatory body of Illinois. Each of these tribunals has assumed jurisdiction over the securities issued by respondent, of which fact the Interstate Commerce Commission has been apprised in the annual reports of the respondent to that commission. The Interstate Commerce Commission, by its failure to act, and by affirmative recommendations in its annual reports to the Congress of the United States, has given to respondent by contemporaneous construction the status of an interurban electric railway. In its 35th annual report to Congress for the year 1921 the commission made the following recommendation:

"We have no jurisdiction over the issuance of securities of a 'street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.' Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. The use of electricity as motive power for railways is rapidly increasing. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under section 15a of the act we are given authority to include in groups of carriers for rate-making purposes such interurban electric lines as are engaged in the general transportation of freight. It seems desirable that section 20a of the interstate commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section."

102 The Interstate Commerce Commission repeated that recommendation in its annual reports to Congress for the years 1922 to 1925, inclusive. In its annual report to Congress for the year 1929 the commission made the following comments and recommendation:

"In our annual reports to the Congress for various years since the enactment of the amendments of 1920, we have recommended that section 20a, relating to the issuance of securities, be so amended as to apply to electric railway companies engaged in the general transportation of freight. Experience in the administration of the act, as well as changes in the conditions affecting electric railway companies, seem to require that consideration be given to the general subject of the application of various sections of the statute to those companies."

Thos. recommendations were repeated by the commission in its annual reports to Congress for the years 1929 and 1930.

Respondent has been informed by letter on two occasions since the year 1920 by certain officials of the Interstate Commerce Commission that unless it were advised to the contrary it need not file

returns in response to certain orders made by the commission designed to determine the recapturable income from railroads subject to Section 15a of the interstate commerce act.

The court finds that the various photographs, charts, exhibits, and diagrams introduced in evidence by plaintiff and respondent correctly portray the facts which they are intended to show.

The foregoing findings of fact are based upon the legal and competent evidence produced upon the trial rejecting all improper, irrelevant, and incompetent parts thereof.

CONCLUSIONS OF LAW

The court, upon the foregoing findings of fact, states the following as its conclusions of law:

1. The letter as well as the spirit, of the interstate commerce act as amended by transportation act, 1920, clearly excludes from section 20a of the interstate commerce act, and from other sections thereof, independently operated electric railways. Congress there and elsewhere in the act described these railways as street, suburban, and interurban electric railways not operated as a part of a general steam railroad system of transportation, and by doing so it adopted a descriptive term which had the sanction of time and common usage. Congress used substantially the same description in the Federal control act, the electric railway mail pay act, and in various sections of the transportation act, 1920, and the interstate commerce act. The Supreme Court used the term "interurban electric railway" in Omaha and Council Bluffs Street Ry. Company v. I. C. C., 230 U. S. 324, and in Spokane & Inland Empire
103 R. R. Co. v. U. S., 241 U. S. 344. Among the common characteristics of interurban electric railways, subject to the jurisdiction of the Interstate Commerce Commission unless specifically excluded by the language of certain sections of the interstate commerce act, are that they use electric power in the transportation of passengers or freight or both in intrastate and interstate commerce, occupy city streets and highways in addition to private rights of way, stop cars or trains at street intersections and country highways for the reception and discharge of passengers, maintain loading platforms and shelter sheds, without agents, for passengers, have short radius curves, and operate part of their system under municipal and village franchise authority and restrictions. Respondent has all of these characteristics.

2. The court finds that the respondent is now, and has at all times since its organization been, an interurban electric railway which is not operated as a part of a general steam railroad system of transportation, and that respondent is not now, and at no time since its organization has it been, a "carrier" or "corporation" within the meaning of those terms as defined in section 20a of the

interstate commerce act, and is therefore excluded from the provisions of section 20a of that act.

3. The court finds that the petition should be dismissed.

By the court.

CHARLES E. WOODWARD,
United States District Judge,
Northern District of Illinois.

MARCH 24, 1932.

104 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 10067

UNITED STATES OF AMERICA, PETITIONER,-

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, respondent

Final decree

March 24, 1932

This cause came on to be heard upon final hearing for a permanent injunction upon the pleadings and evidence and was argued by counsel, and thereupon and upon consideration thereof, it is ordered, adjudged, and decreed

That the petition be, and the same hereby is, dismissed for want of equity.

Dated this 24th day of March, A. D. 1932.

CHARLES E. WOODWARD,
United States District Judge,
Northern District of Illinois.

105 In United States District Court

[Title omitted.]

Notice of Appeal

Filed May 21, 1932

To CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, *Respondent:*

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, United States of America, petition in the above-styled cause, does hereby appeal to the Supreme Court of the United States from the final decree of the District Court entered in said cause March 24, 1932, which said decree dismissed for want of equity the petition of United States praying for

an injunction permanently restraining and preventing respondent, Chicago North Shore & Milwaukee Railroad Company, from issuing any stocks, bonds, or other evidence of indebtedness (collectively called "securities") unless and until it had applied for and obtained the authorization of the Interstate Commerce Commission therefor, as required by section 20a of the interstate commerce act.

GEORGE E. Q. JOHNSON,
United States Attorney.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Service of the foregoing notice of appeal and receipt of a copy thereof are hereby acknowledged this 19 day of May, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, Respondent.

106 In United States District Court

[Title omitted.]

Petition for Appeal

Filed May 21, 1932

United States of America, petitioner in the above-styled cause, feeling itself aggrieved by the final decree entered March 24, 1932, by the District Court in this cause, and desiring to appeal from said decree to the Supreme Court of the United States, pursuant to the provisions of the expediting act, 32 Stat. 823, as amended 36 Stat. L. 854 (U. S. Code, Tit. 49, sec. 45, and Tit. 15, sec. 29) presents herewith its notice of appeal and assignment of errors, and, for the reasons set forth in its assignment of errors, prays for an order of this court allowing said appeal, and for a citation directed to the above-named respondent, Chicago North Shore & Milwaukee Railroad Company, requiring it to be and appear in the Supreme Court of the United States, Washington, D. C., within thirty days after the date of said citation, pursuant to said appeal.

107 And United States of America further prays that a transcript of the record, proceedings, and papers on which said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

GEORGE E. Q. JOHNSON,
United States Attorney.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Dated at Chicago, Illinois, this 21st day of May, 1932.

108 In United States District Court

[Title omitted.]

Assignment of errors

Filed May 21, 1932

United States of America, petitioner in the above-styled cause, now comes and files the following assignment of errors in connection with its petition for an appeal from the final decree entered by this court on March 24, 1932, in said cause:

1. The court erred in entering the decree dismissing for want of equity the petition of United States of America, petitioner.

2. The court erred in finding and holding that the respondent "is now, and has at all times since its organization been, an interurban electric railway."

3. The court erred in finding and holding that respondent "is not now, and at no time since its organization has it been, a 'carrier' or 'corporation' within the meaning of those terms as defined in section 20a of the interstate commerce act, and is therefore excluded
109 from the provisions of section 20a of that act."

4. The court erred in failing and refusing to find and hold upon the facts of record and upon the facts found by it that respondent is a "carrier" as that term is defined in said section 20a of said act, and in failing to find and hold that respondent is subject to the provisions and requirements of said section 20a.

5. The court erred in failing and refusing to enter the injunction as prayed for by the petitioner.

Wherefore, petitioner, United States of America, prays that the final decree entered March 24, 1932, in this cause dismissing the petition for want of equity, be in all respects reversed and set aside, with directions that the permanent injunction prayed for by United States be granted, and for such other and further relief as may be necessary and appropriate in the premises.

Dated, Chicago, Illinois, May 21, 1932.

GEORGE E. Q. JOHNSON,
United States Attorney.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Service of the foregoing assignment of errors and receipt of a copy thereof are hereby acknowledged this 19 day of May, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, respondent.

110 In United States District Court

[Title omitted.]

Order allowing appeal

May 21, 1932

The above-named petitioner, United States of America, having duly made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree entered in this cause March 24, 1932, by this court, and having also made and filed its assignment of errors, and having in all other respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty days from the date hereof, and the clerk is directed to transmit forthwith to the Supreme Court of the United States a properly authenticated transcript of the record, proceedings, and papers on which said decree was made and entered.

Dated May 21, 1932.

CHARLES E. WOODWARD,
United States District Judge.

111 In United States District Court

[Title omitted.]

Order extending time

June 17, 1932

On motion of United States attorney it is ordered that the time within which to file record and docket this cause in the Supreme Court of the United States be, and the same is hereby, extended twenty (20) days from June 20, A. D. 1932.

112 In United States District Court

[Title omitted.]

Order extending time

July 8, 1932

On motion of United States attorney it is ordered that the time within which to file transcript of record in the United States Supreme Court be, and the same is hereby, extended from July 10, A. D. 1932, to and including July 31, 1932.

113 In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed July 26, 1932

To the Honorable CHARLES M. BATES,
Clerk of said Court:

Please prepare a transcript of the record in the above case, on appeal to the Supreme Court of the United States, containing the following:

1. Petition (with the two verifications thereto) filed on or about October 3, 1930.
2. Stipulation and order extending time for respondent's answer to November 10, 1930.
3. Answer of respondent filed on or about November 3, 1930, to petition.
4. Stipulation for transcript of record and Court's order approving same.
5. Statement of evidence.
6. Findings of fact and conclusions of law.
7. Final decree of March 24, 1932.

114 8. Notice of appeal and service thereof.

9. Petition for appeal.
10. Assignment of errors and service thereof.
11. Order allowing appeal and service thereof.
12. Citation on appeal, and respondent's admission of service thereof.
13. Order extending time for filing record twenty days from June 20, 1932.
14. Order extending time for filing record from July 10 to July 31, 1932.
15. Præcipe for transcript of record.
16. Docket entries.
17. Clerk's certificate.

GEORGE E. Q. JOHNSON,
United States Attorney,
JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
Solicitors for United States of America, Petitioner.

Service of the foregoing præcipe for transcript of record and the receipt of a copy thereof are hereby admitted and acknowledged this 22 day of July, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore & Milwaukee Railroad Company, Respondent.

115 In United States District Court for the Northern District of Illinois, Eastern Division

Docket No. 10067

UNITED STATES OF AMERICA

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

For plaintiff: Geo. E. Q. Johnson, U. S. Attorney; William D. Mitchell, John Lord O'Brian, Elmer B. Collins.

For defendant: Ralph R. Bradley.

Date	Filings proceedings
Oct. 3, 1930.	Filed bill and copy.
" " "	Issued process and copy.
" " "	Filed appearance.
" 10 "	" process ret'd served.
" 21 "	" stipulation.
" " "	Woodward, J.—On stipulation time for deft. to answer or otherwise defend extended to and inc. the 4th day of Nov. 30 (draft).
Nov. 3, "	Filed answer of deft. and copy.
" 28 "	" notice.
" " "	Woodward, J.—Cause set for hearing March 9th, 1931, 10 a. m.
Feb. 10, 1931.	Filed notice and copy.
" " "	Enter order changing hearing date from March 9-31 to May 25-31. Woodward, J.
5-25-31.	Opening stmts. hrd. Testy. for U. S. hrd. in part & cont'd to May 26 for further hrg.—(1 wit. sworn for U. S.) Woodward, J.
5-26-31.	Further testmy. for pltf. hrd. & cont'd to May 27.—Woodward, J. (2 wit. sw. for U. S.).
5-27-31.	Further testmny. for pltf. hrd. & concl'd. Testimny. for deft. hrd. in part & hrg. cont'd. to May 28, 1931 (2 wit. sw. for pltf. & 2 wit. sw. for deft.). Woodward, J.
" " "	Filed praecipe & issued 1 subpoena.
5-28-31.	Further testmny. for deft. hrd. & hrg. cont'd to May 29.—Woodward, J.
" " "	Filed pet'n. of C. N. S. & M. Ry.
" " "	Order for subpoena duces tecum to Wm. M. Dinneen.
" " "	Issued subpoena duces tecum.
5-29-31.	Further hrg. cont'd. to June 1, 1931—10 a. m.—Woodward, J.
6-1-31.	Testy hrd. & cont'd to June 2, 1931—10:30 a. m. for further hrg.—Woodward, J. (4 wit. sw. for deft.).
116 6-2-31.	Testimony heard & case cont'd to June 3rd, 1931—10 a. m. for further hearing—(5 wit. sw. for deft.). Woodward, J.
6-3-31.	Testimony heard & deft. rests. No rebuttal. Pltf. rests. Briefs to be submitted & to be set for oral argmt.—Woodward, J. (2 wit. sw. for deft.).
6-4-31.	Filed wit. card of F. J. Geraghty.
6-18-31.	Filed subpoena ret'd served.
8- 8 "	" brief for United States & 3 copies.
3-21-32.	Filed petnr's request for findings of fact.
3-24-32.	Enter findings of fact & concins. of law—Enter final decree—Drafts.—Woodward, J
5-21-32.	Filed notice of appeal.
" " "	" petn. for appeal.
" " "	Enter order allowing appeal to U. S. Supreme Court. Draft.—Woodward, J.
" " "	Filed citation on appeal.
" " "	" assignment of errors.
6-17-32.	Order extdg. time to file record & docket case in Supreme Court 20 days from June 20, 1932—Woodward, J.
7- 8-32.	Mo. to extend time for filing transcript of record to & incldg. July 31, 1932, allowed—Woodward, J.
7-26-32.	Filed narrative statement of evidence.
" " "	" stipulation re: Narrative statement of evidence.
" " "	" praecipe for transcript of record.

117 [Clerk's certificate to foregoing transcript omitted in printing.]

118 [Citation in usual form showing service on Ralph R. Bradley et al. filed May, 21, 1932, omitted in printing.]

119, 120 [Omitted.]

121 IN SUPREME COURT OF THE UNITED STATES

Statement of points to be relied upon and designation of the parts of the record to be printed

Filed Aug. 8, 1932

I

United States of America, appellant, will rely upon the following points in brief and oral argument before this Court on its appeal in the above-entitled cause:

1. The District Court erred in entering the decree dismissing for want of equity the petition of United States of America.

2. The District Court erred in finding and holding that the appellee "is now, and has at all times since its organization been, an interurban electric railway."

3. The District Court erred in finding and holding that appellee "is not now, and at no time since its organization has it been, a 'carrier' or 'corporation' within the meaning of those terms
122 as defined in section 20a of the interstate commerce act, and is therefore excluded from the provisions of section 20a of that act.

4. The District Court erred in failing and refusing to find and hold upon the facts of record and upon the facts found by it that appellee is a "carrier" as that term is defined in said section 20a of said act, and in failing to find and hold that appellee is subject to the provisions and requirements of said section 20a.

II

And the United States of America, appellant, further states that the entire record in this cause as filed in this court is necessary for the consideration of the foregoing points, and that the transcript of record as transmitted by the clerk of the District Court should be printed by the clerk of this court for the hearing in this cause in its entirety, except petitioner's Exhibits Nos. 1, 12 and 46, and respondent's Exhibit No. 26, which exhibits were, pursuant to stipulation by counsel approved by order of the District Court, transmitted to the clerk of this court as part of the record for use in their original form. This designation for printing is made without prejudice to the right of appellant and appellee to refer in their briefs or arguments to any of said original exhibits so
123 transmitted to the clerk of this court by the clerk of the District Court.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

Receipt of a copy of the above statement of points and designation of the parts of the record to be printed is hereby acknowledged this 6 day of August, 1932.

RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, Appellee.

[File endorsement omitted.]

124 In Supreme Court of the United States

Stipulation re exhibits

(Filed Aug. 8, 1932)

It is hereby stipulated by and between counsel for the appellant and appellee in the above-entitled cause that petitioner's exhibits Nos. 1, 12, and 46 and respondent's Exhibit No. 26 shall be detached by the clerk of this court from the transcript of record transmitted by the clerk of the District Court, and that said exhibits shall not be printed as part of the record in this court, but shall be retained and made available in their original form as part of the record
125 in this court and may be referred to by the court and by counsel for the parties in their briefs and upon oral argument in said cause.

THOMAS D. THACHER,
Solicitor General,
JOHN LORD O'BRIAN,
The Assistant to the Attorney General,
ELMER B. COLLINS,
Special Assistant to the Attorney General,
Solicitors for United States of America, Appellant.
RALPH R. BRADLEY,
ROBERT E. QUIRK,
Solicitors for Chicago North Shore and Milwaukee Railroad Company, Appellee.

[File endorsement omitted.]

(Indorsement on cover:) File No. 36961. N. Illinois, D. C. U. S. Term No. 264. The United States of America, appellant, vs. Chicago, North Shore and Milwaukee Railroad Company. Filed July 29, 1932. File No. 36961.

U. S. GOVERNMENT PRINTING OFFICE: 1933

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No. 264

In the Supreme Court of the United States

OCTOBER TERM, 1932

UNITED STATES OF AMERICA, APPELLANT

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 264

UNITED STATES OF AMERICA, APPELLANT

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, the United States of America, appellant, submits herewith its statement showing the basis of the jurisdiction of this Court in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the decree here complained of is conferred by the Act of February 11, 1903, c. 544, Sec. 2, 32 Stat. 823, known as the Expediting Act (U. S. C., Title 49, Secs. 44 and 45), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

135637—32

B

DATES OF DECREE AND APPLICATION FOR APPEAL

The final decree sought to be reviewed was entered March 24, 1932. (R. 104.)[1] Appeal was allowed May 21, 1932. (R. 110.)

Extensions of time were granted for docketing the case with the Clerk of this Court until July 31, 1932. (R. 111, 112.) The case was docketed in this Court July 29, 1932.

C

NATURE OF THE CASE

This cause was instituted by petition brought by the United States of America, appellant herein, for an injunction to restrain and prevent the appellee, a common carrier by railroad, from issuing further shares of capital stock, bonds, or other evidence of indebtedness without having first applied for and obtained the authorization of the Interstate Commerce Commission therefor, as required by Section 20a of the Interstate Commerce Act, C. 91, 41 Stat. 494 (U. S. C., Title 49, Sec. 20a), which section makes it unlawful for any carrier subject thereto to issue any share of capital stock or securities, etc., unless and until the Interstate Commerce Commission by order authorizes such issue. (R. 3–11.)

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[1] The record has not yet been printed. The page numbers refer to the pages of the record transmitted by the clerk of the court below.

The District Court wrote no opinion, but on March 24, 1932, filed its findings of fact and conclusions of law, holding that the appellee was not a carrier as defined by Section 20a of the Interstate Commerce Act, and that the petition for an injunction should be dismissed. (R. 86–103.)

CASES SUSTAINING JURISDICTION

The following decisions are believed to sustain the jurisdiction of this Court:

Interstate Commerce Commission v. *Baird,* 194 U. S. 25;

Swift & Company v. *United States,* 276 U. S. 311;

United States v. *California Cooperative Canneries,* 279 U. S. 553;

United States v. *Reading Co.,* 253 U. S. 26.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.

AUGUST, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

DEC 1
CHARLES EL

No. 264

In the Supreme Court of the United States

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THE UNITED STATES OF AMERICA, APPELLANT

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 264

THE UNITED STATES OF AMERICA, APPELLANT

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The United States District Court for the Northern District of Illinois rendered no opinion. Its findings of fact and conclusions of law (R. 47–65) have not been reported.

JURISDICTION

The decree of the District Court was entered March 24, 1932. (R. 65.) Petition for appeal was filed May 21, 1932, and allowed the same day. (R. 66, 68.) The jurisdiction of this Court rests on the Expediting Act of February 11, 1903, c. 544,

32 Stat. 823 (U. S. C., Title 49, Sec. 45), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345).

QUESTION PRESENTED

Section 20a of the Interstate Commerce Act makes it unlawful for any carrier subject to the Act "(except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation)" to issue securities or assume obligations without having obtained prior authorization therefor from the Interstate Commerce Commission. The sole question presented is whether appellee's railway, which is independently operated, is an "interurban electric railway" within the meaning of this exception.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 27–30.

STATEMENT

This is a suit under Section 12 (1) of the Interstate Commerce Act (*infra*, p. 27) to enjoin appellee from issuing any securities and from assuming any obligation or liability in respect of the securities of any other person without having first obtained from the Interstate Commerce Commission an order authorizing the issuance of such securities or the assumption of such obligation or

liability. (R. 1, 6–7.) The petition alleges that appellee, unless enjoined, will continue to issue its securities without obtaining authority from the Commission in violation of Section 20a of the Interstate Commerce Act. (R. 6.)

The District Court made extensive findings of fact concerning the nature of appellee's business and, upon these findings, concluded as a matter of law that appellee was an independently operated electric interurban railway excepted from the requirements of Section 20a. (R. 47, 64.) The decree dismissing the petition was entered (R. 65) prior to the decision of this Court in *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission,* 286 U. S. 299, construing the like exempting language of paragraph (22) of Section 1 of the Interstate Commerce Act.

Appellee is a corporation organized under the General Railroad Laws of the State of Illinois (Cahill's Revised Statutes, 1921, c. 114) and is a common carrier by railroad subject to certain sections of the Interstate Commerce Act. (R. 9, 48.) It is engaged in the general transportation of freight and passengers in interstate commerce over an electrified railroad between Chicago, Illinois, and Milwaukee, Wisconsin, consisting of 138.38 "route" miles of main-line track, 132.82 miles of second track, 42.60 miles of yard and other track, a total of 313.81 miles of all track. (R. 49, 50, 57–59.) Of the total route miles of track, only 14.66% represents tracks in city streets. (R. 50.)

Appellee's main terminals are in Chicago and Milwaukee. (R. 49.) In Chicago it operates over the tracks of the Chicago Rapid Transit Company from a point in the south side of the city to a point in the north side of the city, a distance of about 16 miles. (R. 49.) From the latter point appellee's line runs northerly for about 8 miles to Wilmette, Illinois, over elevated, dirt-fill tracks leased from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and jointly used by the Rapid Transit Company. (R. 49.) From Wilmette to Milwaukee, a distance of about 68 miles, appellee operates over its own right of way, except for about 3 miles where its line in a few municipalities runs on public thoroughfares. (R. 49, 51.) In Milwaukee appellee operates a distance of 2.67 miles over the tracks of a company owned by it, the Chicago and Milwaukee Electric Railway Company. (R. 49.) Such operation is on the streets in common with vehicular traffic and is controlled in part by "stop and go" lights. (R. 49.)

The line between the north city limits of Chicago and the town of North Chicago is known as the "Shore line." (R. 49.) Appellee also operates a second line between these two points, west of and paralleling the Shore line, known as the "Skokie Valley line." (R. 49.) Appellee owns all of the right of way on this line. (R. 51.) In addition, appellee has two branch lines in Illinois, the total distance of which is about 12 miles. (R. 49.)

Appellee's tracks are standard gauge. (R. 50.) With the exception of 1.2 miles, all the line used for train operation upon appellee's own right of way is double-track and the line in Milwaukee is double-track. (R. 50.) The operation over the lines of the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is double-track and multiple track. Of appellee's total owned tracks, only 2.4 miles are laid in paved streets, 0.197 mile is laid in unpaved portions of streets, and 2.8 miles are laid in unpaved street area, the track zone not being used for street purposes. (R. 50.)

From Waukegan north to Milwaukee the right of way averages about 100 feet in width. (R. 51.) South from North Chicago to the connection with the line of the Chicago Rapid Transit Company the right of way averages from 25 to 100 feet in width, the greater part being about 50 feet. (R. 51.) The right of way on the Skokie Valley line is wide enough to accommodate a four-track line. (R. 51.) Appellee has acquired part of its right of way through the exercise of the power of eminent domain. (R. 51.)

The bridges on appellee's line are built according to steam railway specifications and standards and are suitable for the operation of standard freight cars of steam railroads. (R. 51.) The carrying strength or load capacity of the bridges on appellee's owned main line will support the average steam railroad train. (R. 51.)

Appellee's tracks are physically connected with those of 4 steam railroads at 13 points, and it can and does interchange carload freight shipments with steam railroads at 8 different points. (R. 52.) It has interchange track connections (having a capacity of about 365 cars) with the Soo Line, the Elgin, Joliet and Eastern, the Chicago & North Western, and the Chicago, Milwaukee, St. Paul & Pacific, all steam railroads. (R. 52.) It has on its line 108 industry, team, and switch tracks at 37 stations, which serve about 40 different types of industry and the general public, and have a total capacity of 1,801 freight cars or 1,364 passenger cars. (R. 52, 53.) To increase its facilities for handling carload freight it has constructed more than 3 miles of side tracks into industrial yards and in 1930, 12 new industries located on its line. (R. 52.) It has 19 passing tracks, many of which are used as team or storage tracks, as well as for train passing, and its freight classification yards at Pettibone has a capacity of 161 freight cars. (R. 53.)

Appellee has a number of modern well-equipped passenger stations. (R. 53.) At 51 stations it maintains a station agent selling passenger tickets and performing the usual duties of a station agent. (R. 53.) At 96 other points it maintains shelters and platforms, at 35 points platforms only, and at 42 points, at which certain of its trains stop at streets or highways no facilities are provided. (R. 53.)

On the Skokie Valley and Shore lines electrical power is transmitted overhead, while on the tracks of the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad and on a small portion of appellee's owned tracks the current is fed by the third-rail system. (R. 54.) Appellee uses 600 volts, direct current, for its power. (R. 55.) This is the same voltage now used by the Pennsylvania Railroad for its entrance into and terminal operations at New York City, although the Pennsylvania is increasing its voltage. (R. 55.)

Appellee owns 7 electric locomotives. (R. 55.) They are lighter than those used on electrified sections of steam railroads and can not haul as many tons per train as steam railroads haul. (R. 55.) Appellee has within the past 5 years used steam locomotives owned by it for hauling revenue freight. (R. 55.) In transporting its less-than-carload merchandise despatch freight it uses a baggage type of passenger car, some of these cars being trailers, but most of them being equipped with motors. (R. 55.) It also owns and uses refrigerator cars similar to the motor merchandise despatch cars. (R. 55.) It owns 206 freight cars, of which 114 are interchangeable with steam railroads. (R. 55–56.) These 114 cars have no electrical equipment and are exactly the same as steam railroad freight cars in equipment, brakes, safety appliances, automatic couplers, and other devices.

(R. 56.) Appellee has 88 gondola cars, with a capacity of 80,000 ~~tons~~ lbs. or more, and its flat cars have a capacity of 80,000 ~~tons.~~ lbs. (R. 56.) The average capacity of steam-railroad freight cars is about 80,000 ~~tons.~~ lbs. (R. 55.)

Appellee's passenger equipment consists of 182 units, of which 150 are equipped with motors and 32 are operated as trailers. (R. 56.) Nine of these are dining cars and 5 observation parlor cars. (R. 56.) The passenger cars are somewhat shorter and narrower than those of any steam railroad passenger cars shown of record. (R. 56.)

Appellee has on file with the Interstate Commerce Commission a total of 221 effective powers of attorney and concurrences issued by it. (R. 57.) It publishes 16 local freight tariffs and participates as initial carrier in 206 freight tariffs and as a delivering or intermediate carrier in more than 800 freight tariffs, thus providing freight rates in conjunction with steam railroads to and from practically every State and points in Canada and Mexico. (R. 57.) It sells through railroad and Pullman tickets to any part of the United States, Canada, and Mexico, and published tariffs permit it to sell passenger tickets for trips around the world. (R. 57.) It publishes its freight and passenger tariffs through the same agents used by all steam railroads and many of its rates and those of steam roads are published in the same joint tariffs. It assesses its local passenger fares upon the same

per-mile basis used by all steam railroads, namely, 3.6¢ per mile. (R. 57.) It publishes in its train schedules connections with the trains of all steam lines, motor bus, and electric lines at both Chicago and Milwaukee, including all the transcontinental roads. (R. 58.)

Appellee operates, via its Skokie Valley line, about 20 fast or through passenger trains daily in each direction between downtown Chicago and downtown Milwaukee. (R. 57.) Their running time is about 1 hour 45 minutes, equaling the fastest trains of the Chicago & North Western, which operates 15 through trains daily between Chicago and Milwaukee. (R. 57.) Appellee and the Chicago & North Western are in direct competition with each other in their through passenger service, their limited service to Waukegan, and their suburban and commuter service. (R. 57.) Appellee added dining cars to its through Chicago-Milwaukee service to compete with the Chicago-Milwaukee passenger service of the Chicago & North Western and the Chicago, Milwaukee, St. Paul & Pacific. (R. 58.) Appellee's passenger service and fares are subject to the jurisdiction of the Interstate Commerce Commission. (R. 58.)

Appellee is a member or associate member of the following regular steam-railroad organizations: American Railway Association, Western Passenger Association, Bureau for the Safe Transportation of Explosives, and Western Weighing and Inspection Bureau. (R. 60.) It is also a sub-

scriber to the following codes or rules entered into by steam railroads generally: Code of Car Service Rules, Code of Per Diem Rules, Car Service and Per Diem Rules Agreement of the American Railway Association, Master Car Builders' Rules, Interchange Agreement of the American Railway Association, Official List of Open and Prepay Stations, and Consolidated Freight Classifications. (R. 60.) It operates its trains under rules substantially similar to the Standard Code of Train Rules of the American Railway Association. (R. 59.) Its bills of lading, waybills, and interline waybills are the same as those used on steam railroads generally. (R. 60.) Its departmental organization is similar to that of steam railroads. (R. 61.)

Appellee's total transportation revenue in 1930 was $6,091,402.59, of which about 76% was from passenger traffic and about 22% from freight traffic. (Gov. Ex. 18, R. 33.) In each of the four preceding years its transportation revenue was over $7,000,000, and the percentage thereof derived from passenger and freight traffic, respectively, was substantially the same as in 1930. (*Ibid.*) In 1930, 87% of its carload freight traffic was interchanged with connecting steam railroads and about 78% of all its freight traffic was interline, but only about 42% of its freight revenue was derived from interline business. (Gov. Exs. 18, 22, R. 33, 35; R. 59.) In September, 1930, it interchanged carload freight traffic with 69 different steam rail-

roads and with 31 different private car companies. (R. 59.) No cars containing less-than-carload freight are interchanged with steam railroads, but about 15% of its less-than-carload freight is interchanged. (Gov. Ex. 21, R. 34; R. 59.) Class I steam railroads of the United States derive about 15% of their total revenues from passenger traffic and about 77% from freight traffic, and (in 1928) about 65% from interline freight traffic. (R. 60–61.)

As of April 30, 1931, there were outstanding in the hands of the public securities issued by respondent and its predecessors of a par value of about $43,000,000, all but $4,000,000 of which were issued since March 1, 1920. (R. 62.) All of these securities were issued under the authority of and with the approval of the regulating commissions of Illinois and Wisconsin. (R. 62.) All securities issued by appellee since March 1, 1920, have been reported to the Interstate Commerce Commission as having been issued under the authority of these commissions. (R. 62.)

Appellee is not operated as a part of any steam railroad system of transportation. (R. 62.) In Milwaukee and Waukegan it furnishes street-car service. (R. 58.) This service is separate and distinct from its other passenger service, different equipment is used, and the local fares are governed by special State tariffs. (R. 58.)

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred—

(1) In entering a decree dismissing the petition for want of equity.

(2) In holding that appellee is an "interurban electric railway."

(3) In holding that appellee is not a "carrier" or "corporation" within the meaning of those terms as defined in Section 20a of the Interstate Commerce Act, and is therefore excluded from the provisions of Section 20a of that Act.

(4) In failing and refusing to hold that appellee is a "carrier" as that term is used in said Section 20a, and in failing to hold that appellee is subject to the provisions and requirements of said Section 20a.

(5) In failing and refusing to enter an injunction as prayed for by the United States.

SUMMARY OF ARGUMENT

Sections 1 (22) and 20a of the Interstate Commerce Act were integral parts of the new policy adopted by Congress when it enacted the Transportation Act, 1920. The purpose of that Act was to foster an efficient national system of railroad transportation. It is submitted that the words "interurban electric railway" had the same meaning in Section 20a as in Section 1 (22). To ascribe a different meaning to these words as used in each section would be an undue refinement of inter-

pretation and would lead to further uncertainty as to the scope and application of the Act.

In *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission*, 286 U. S. 299, this Court held that the electrically operated railroad there involved was not an "interurban electric railway" within the meaning of Section 1 (22). A comparison of the operations of the railroad involved in that case with those of appellee shows that appellee is a carrier within the letter and purpose of the Interstate Commerce Act in even a more substantial sense than was the former railroad, and that appellee falls within the class of carriers "long recognized as objects of national concern and regulation" and is not a "street, suburban, or interurban electric railway" within the meaning of the latter phrase as used in Section 20a.

A carrier does not have to be predominately a freight-carrying system in order to be a substantial factor in the business of interstate transportation by railroad. If this were otherwise, the operations of such an important carrier as the Long Island Railroad would be excluded from the control of the Interstate Commerce Commission under Sections 1 (18) and 20a of the Interstate Commerce Act, and clearly no such result was intended by the exclusion of interurban electric railways from those sections. Appellee has been held to be a railroad company with power to condemn land for railroad purposes under the laws of Illinois, (*Chicago North Shore &*

Milwaukee Railroad Co. v. *Chicago Title & Trust Co.*, 328 Ill. 610, 615–616.) Congress has described appellee as a "railroad corporation" in granting it an easement over a military reservation subject to reversion to the Government if the easement be used "for any other than railroad purposes." (42 Stat. 622.)

ARGUMENT

APPELLEE IS SUBJECT TO THE PROVISIONS OF SECTION 20A OF THE INTERSTATE COMMERCE ACT

Paragraph (18) of Section 1 of the Interstate Commerce Act requires carriers subject to the Act to obtain a certificate of public interest and convenience from the Interstate Commerce Commission before extending their lines or constructing new lines. Paragraph (22) of Section 1 exempts from the authority conferred by paragraphs (18) to (21) of this section "street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

Section 20a requires carriers subject to the Act "(except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation)" to obtain from the Commission an order of authorization before issuing any securities or assuming certain obligations. The section provides that the

Commission shall make such order only if it finds that such issue or assumption is "compatible with the public interest," "consistent with the proper performance by the carrier of service to the public as a common carrier," and "will not impair its ability to perform that service."

Both Section 20a and paragraphs (18) to (22) of Section 1 were added to the Interstate Commerce Act by the Transportation Act, 1920. The regulatory authority conferred by these sections is, in part at least, supplementary, both being designed to prevent harmful duplication of facilities and impairment of carrier credit. Where a railroad has sufficient funds in hand to start new construction, control over security issues would not alone adequately protect the public interest. On the other hand, where a carrier, as a first step in a program of expansion, issues securities to finance the project, the public interest requires that this preliminary step be within the control of the Commission. This Court has frequently referred to the regulatory power given by these sections as integral parts of the new policy adopted in the Transportation Act of fostering an efficient national system of railroad transportation.

Railroad Commission v. *Southern Pacific Co.*, 264 U. S. 331, held that a State Commission could not, upon the facts there presented, require railroads to construct a new union station until the

same had been authorized by the Interstate Commerce Commission under paragraphs (18) to (21) of Section 1 (Section 402 of the Transportation Act). The Court there said (p. 347):

> The purpose of Congress to prevent interstate carriers from incurring expense which will lessen their ability to perform well their interstate functions is further shown in § 439 of the Transportation Act, whereby the Interstate Commerce Act is amended by insertion of § 20a. This new section subjects to the approval or rejection of the Interstate Commerce Commission the issue by an interstate carrier of all future shares of stock, bonds or other evidence of indebtedness * * *. This is of course *in pari materia* with the restriction of paragraph 21 of § 402 to prevent a possible impairment of the financial ability of interstate carriers to discharge their interstate commerce duties.

In *Dayton-Goose Creek Railway Co.* v. *United States,* 263 U. S. 456, which upheld the constitutionality of the recapture provisions of Section 15a (which section also authorized the Commission to establish rates for carriers as a whole or in territorial groups), the Court said (p. 478):

> The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to

> maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged.

We therefore submit that the words "interurban electric railway" have the same meaning in Section 20a as in Section 1 (22). They are used in the same context in parts of the Act having a similar purpose. To ascribe different meanings to these words would seem to be an undue refinement of interpretation and would lead to further uncertainty as to the scope and application of the Act.

In *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission*, 286 U. S. 299, *supra*, this Court held that not every railroad operated by electricity between cities was an electric interurban railway within the meaning of Section 1 (22). After referring to the emphasis placed by the carrier upon the aptness of these words as descriptive of its railway, the Court said (p. 306):

> But this literal application is inconclusive, for it ignores the entire phraseology employed, which is, "street, suburban, or interurban electric railways." * * * The descriptive adjectives show that Congress had in mind a class of carriers differing essentially from those long recognized as the objects of national concern and regulation.

The Court, without laying down any general rule, held that the Piedmont & Northern was not an electric interurban railway within the meaning of Section 1 (22). It becomes pertinent, therefore, to compare the operations of that carrier with those of appellee.

In length of line and in total revenues appellee is the more important carrier. Appellee's line from Chicago to Milwaukee is over 100 miles in length (*supra*, p. 4); the main line of the Piedmont & Northern is less than 90 miles.[1] The total distance of the former's lines is about 138 miles (*supra*, p. 3) compared with about 128 miles of lines for the latter.[1] For the year 1926 the former had operating revenues of about $7,200,000 (Gov. Ex. 18, R. 33); the latter's operating revenues for that year were about $2,500,000.[2]

From the point of view of tariffs published and concurred in and of membership in traffic organiza-

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[1] *Piedmont & Northern Ry. Co.* v. *United States*, 30 F. (2d) 421, 422.

[2] *Piedmont & Northern Ry. Co.* v. *United States*, *supra*, p. 429.

tions, both carriers are national in scope. The former participates as initial carrier in 206 freight tariffs and as a delivering or intermediate carrier in more than 800 freight tariffs (R. 57); the latter is a party as initial carrier to 184 general tariffs and as participating carrier in 364 tariffs published under powers of attorney given to the steam railroads (286 U. S. 299, 309). These tariffs embrace the entire country and parts of Mexico and Canada. (*Ibid.*) Both carriers are members of steam railroad traffic organizations. (*Supra*, p. 9; *Proposed Construction by Piedmont & Northern Ry.*, 138 I. C. C. 363, 370.) In addition, both carriers connect and tie in with street railway systems in cities and towns on their systems (R. 49–50; 286 U. S. 299, 308), and both carriers closely parallel the line of one or more steam railroads (R. 58; 138 I. C. C. 363, 372).

We conceive that the principle to be deduced from the decision of this Court in the *Piedmont & Northern case* is that when the volume of a carrier's interstate business is such as to constitute it an important competitor, on substantially equal terms, with interstate steam railroads, it falls within the class of carriers "long recognized as objects of national concern and regulation" and is not a "street, suburban, or interurban electric railway" exempted from the regulatory provisions governing extensions and abandonments of lines and security issues. It would seem clear that a carrier

does not have to be predominantly a freight-carrying road in order to be a substantial factor in the business of interstate transportation by railroad. Appellee's annual freight revenue of over $1,300,000 is not of any less importance from the standpoint of national regulation because its passenger revenue is more than three times greater.

In the matter of passenger traffic, appellee furnishes the same character of service as that of its steam-railroad competitors. Between the important cities of Chicago and Milwaukee its running time is the same or better, it runs a greater number of trains, and it provides parlor observation cars, dining cars, and the usual station facilities. (*Supra,* pp. 6, 9.) During September, 1930, appellee sold interline tickets for transportation via 50 different steam railroads, 2 steamship lines, 2 air lines, and 1 motor-coach line to points in 38 different States, the District of Columbia, and Canada, and during that period tickets were sold to points on its line by 35 steam railroads from points ranging from Massachusetts to California. (Gov. Ex. 24, R. 36–37.) In September, 1930, over 50% of its passenger revenue was from ticket sales between Chicago stations and the cities of Waukegan, Illinois, and Kenosha, Racine and Milwaukee, Wisconsin. (Gov. Ex. 23, R. 35.) Applying this percentage to the figures for the year 1930 shows a revenue of over $2,300,000 from passenger traffic between Chicago and these cities, and for the year 1926 this revenue would be over

$2,850,000, or substantially the amount of the entire freight revenue of the Piedmont & Northern for the year 1926.[3]

The freight revenue of the Long Island Railroad Company in 1928 was $11,605,000, its passenger revenue $26,460,000, and its total railway operating revenue $40,532,000.[4] It would scarcely be contended that this important carrier, if completely electrified, would not be subject to Sections 1 (18) and 20a of the Interstate Commerce Act because only about 28% of its operating revenue was from freight traffic. (See *Transit Commission* v. *United States,* 284 U. S. 360.)

The interrelation between appellee's intrastate and interstate traffic is shown by the fact that it has twice applied to the Commission alleging that intrastate rates imposed by State authority caused unjust discrimination against interstate commerce or undue prejudice to persons or localities in interstate commerce, in violation of paragraph (4) of Section 13 of the Interstate Commerce Act, as added by the Transportation Act, 1920. In both cases the Commission found that the intrastate rates caused unjust discrimination against interstate commerce, as well as undue prejudice, and raised the intrastate rates to the level of the inter-

[3] *Piedmont & Northern Ry. Co.* v. *United States, supra,* p. 429.

[4] *Long Island Railroad Company Abandonment,* 162 I. C. C. 363, 368.

state rates in order to remove this unjust discrimination and undue prejudice. *Intrastate Fares of the Chicago North Shore & Milwaukee Railroad within the State of Illinois,* 62 I. C. C. 188, 193; *Intrastate Fares of the Chicago North Shore & Milwaukee Railroad within the States of Illinois and Wisconsin,* 136 I. C. C. 165, 168. In the former case the Commission said (pp. 192–193):

> As tending to show that it is not a street railway in its interurban operations, petitioner relies upon the fact that it operates daily upward of 40 limited trains between Chicago and Milwaukee and 96 express trains between Chicago and Waukegan; that this service is practically doubled on Saturday afternoons, Sundays, and holidays; that intrastate passengers travel on its express trains side by side with interstate travelers; that its interurban cars are used interchangeably in intrastate and interstate service and are heavier and larger than ordinary street cars; * * * that whatever the character of the original franchises granted to petitioner's predecessors, petitioner's line is now operated under the general railroad laws of Illinois and has been so operated since 1902, when its predecessor, the Chicago & Milwaukee Electric Railroad Company, was organized; that petitioner's status as a railroad engaged in general transportation has been specifically recognized by ordinances of the municipalities which it serves

and by formal order of the state of Illinois; and that this is the first time in any proceeding that its status as such a railroad has been questioned.

Appellee maintains freight depots used exclusively for receiving and delivering freight at several of its stations. (R. 54.) At Milwaukee there is a brick freight station and at Evanston, Illinois, a brick freight depot used jointly with the Chicago, Milwaukee, St. Paul & Pacific Railroad. (R. 54.) Appellee's trains are operated under train orders, clearance cards, "meet" orders, changes in orders, rules as to superior and inferior trains, and in many other details as are trains of steam railroads. (R. 59.) Train despatching is done by telephone. (R. 59.)

Its advertisements present to the public its facilities for handling carload freight. Government Exhibit 46 (consisting of 5 advertisements by appellee during 1930 and 1931 in "The Traffic World" and filed (R. 16) as an original exhibit as part of the record in this Court) calls attention to its facilities for handling carload freight from points south, east, or southeast of Chicago when destined to points in the north or northwest by routing to appellee's line through three connections so as to avoid congestion in Chicago freight yards. The reverse routing on traffic moving southbound is stated to be equally effective. A typical statement on Sheet 1 reads:

> The North Shore Line maintains heavy duty electric equipment operating over standard rails and roadbed for the prompt handling of this carload business.

In 1930 about 78% of appellee's freight tonnage was interline traffic and only 10% of its freight tonnage was less-than-carload freight. (Gov. Ex. 21, R. 34.)

Appellee has been held to be a railroad company under the laws of Illinois, with power to condemn land for railroad purposes. *Chicago North Shore & Milwaukee R. R. Co.* v. *Chicago Title & Trust Co.*, 328 Ill. 610, 615–616. By an act approved June 6, 1922 (42 Stat. 622), Congress granted appellee, which was described as a "railroad corporation organized and existing under and by virtue of the laws of the State of Illinois," a perpetual easement "for railroad purposes" over a military reservation, subject to the proviso that the easement should not be used "for any other than railroad purposes," and that when it should cease to be so used it should revert to the United States.

We submit that the facts set forth in the findings of the District Court do not support its statement that the Interstate Commerce Commission "by its failure to act, and by affirmative recommendations in its annual reports to the Congress of the United States, has given to respondent by contemporaneous construction the status of an interurban electric railway." (R. 63.) The court then quotes from the Commission's annual report

for the year 1921, which it states was repeated in its annual reports for the years 1922 to 1925, inclusive. The substance of the recommendation is:

> It seems desirable that section 20a of the interstate commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section. (R. 63.)

This shows that the Commission thought that Section 20a needed clarification, but that it was of the opinion that some electric railroads might be subject to Section 20a. The quotation from the annual report for the year 1929 recommends an amendment to Section 20a which would make the jurisdiction over electric railways under that section similar to the jurisdiction over electric interurban railways under Section 15a.

The court states that appellee has on two occasions been informed by certain officials of the Commission that, unless it were advised to the contrary, it need not file returns relating to recapturable income under Section 15a. (R. 63–64.) The excepting clause as to electric railroads in Section 15a differs from the exception in Section 20a. In *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission, supra,* this Court said (p. 312) with reference to similar administrative rulings relied upon by the carrier:

> Only a word need be said with respect to the contention that governmental agencies have heretofore classified the railway as an

interurban electric line. It is true that in connection with quite diverse administrative functions the United States Labor Board, the Postmaster General, and the Interstate Commerce Commission have classified petitioner's railway as an interurban electric line in distinction to steam railroads. Neither the administrative nor the statutory classification has, however, been uniform, and in any event is not controlling in this litigation.

CONCLUSION

It is respectfully submitted that the decree below should be reversed with directions to issue an injunction as prayed for in the petition.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
CHARLES H. WESTON,
WENDELL BERGE,
ELMER B. COLLINS,
Special Assistants to the Attorney General.

DECEMBER, 1932.

APPENDIX

Sec. 12 (1) of the Interstate Commerce Act, as amended, provides in part as follows:

> That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof * * *. (C. 104, 24 Stat. 383; C. 128, 26 Stat. 743; C. 91, 41 Stat. 484; U. S. C., Title 49, Sec. 12 (1).)

Sec. 20a of the Interstate Commerce Act, as amended, provides in part as follows:

> (1) That as used in this section the term "carrier" means a common carrier by railroad (except a street, suburban, or inter-

urban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this Act, or any corporation organized for the purpose of engaging in transportation by railroad subject to this Act.

(2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

* * * * *

(7) The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

* * * * *

(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed

the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court. (C. 91, 41 Stat. 494–496; U. S. C., Title 49, Sec. 20a.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 264.

THE UNITED STATES OF AMERICA, *Appellant*,

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, *Appellee*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

BRIEF FOR APPELLEE.

RALPH R. BRADLEY,
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ROBERT E. QUIRK,
Solicitors for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 264.

THE UNITED STATES OF AMERICA, *Appellant*,

v.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, *Appellee*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

BRIEF FOR APPELLEE.

PROCEEDINGS IN THE LOWER COURT.

This is an appeal from the final decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered March 24, 1932 (R. 65). That court wrote no opinion in this case. Its action on the case consists of comprehensive findings of fact and conclusions

of law which have not been officially reported, but which appear in the printed record. (R. 47-65.)

This suit is brought under Section 12(1) of the Interstate Commerce act to enjoin and restrain appellee from issuing any capital stock, bonds or other evidences of indebtedness, collectively termed securities, and from assuming any obligations or liabilities as guarantor, endorser, surety or otherwise, in respect of the securities of any other person or corporation unless and until appellee shall have first applied for and obtained from the Interstate Commerce Commission an order authorizing the issuance of such securities or the assumption of such obligations or liabilities. The ground of the suit is that the appellee is a common carrier by railroad as defined in Section 20a of the Interstate Commerce act, that since 1920 it has issued securities aggregating $39,000,000 without the authority of the Interstate Commerce Commission, and that unless enjoined from doing so will continue to issue securities without obtaining authority from the Commission. The appellee answered and prayed that the suit be dismissed on the ground that it is, and at all times has been, an interurban electric railway not operated as a part of a general steam railroad system of transportation, and as such is not subject to the provisions of Section 20a.

The court below granted the prayer of appellee, denied the injunction sought and dismissed the petition. In doing so it stated its conclusions of law as follows (R. 64):

> 1. The letter, as well as the spirit of the Interstate Commerce act as amended by Transportation Act, 1920, clearly excludes from section 20a of the Interstate Commerce act, and from other sections thereof, independently operated electric railways. Congress there and elsewhere in the act described these railways as street, suburban and interurban electric railways not operated as a part of a general steam railroad system of transportation, and by doing so it adopted a descriptive term which had the sanction of time and

common usage. Congress used substantially the same description in the Federal Control act, the Electric Railway Mail Pay act and in various sections of the Transportation act, 1920, and the Interstate Commerce act. The Supreme Court used the terms "interurban electric railway" in *Omaha and Council Bluffs Street Ry. Company v. I. C. C.*, 230 U. S. 324, and in *Spokane & Inland Empire R. R. Co. v. U. S.*, 241 U. S. 344. Among the common characteristics of interurban electric railways, subject to the jurisdiction of the Interstate Commerce Commission unless specifically excluded by the language of certain sections of the Interstate Commerce act, are that they use electric power in the transportation of passengers or freight or both in intrastate and interstate commerce, occupy city streets and highways in addition to private rights of way, stop cars or trains at street intersections and country highways for the reception and discharge of passengers, maintain loading platforms and shelter sheds, without agents, for passengers, have short radius curves and operate part of their system under municipal and village franchise authority and restrictions. Respondent has all of these characteristics.

2. The Court finds that the respondent is now, and has at all times since its organization been an interurban electric railway which is not operated as a part of a general steam railroad system of transportation, and that respondent is not now, and at no time since its organization has it been, a "carrier" or "corporation" within the meaning of those terms as defined in section 20a of the Interstate Commerce act, and is therefore excluded from the provisions of section 20a of that act.

JURISDICTION.

The jurisdiction of this court rests on the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823 (U. S. C., Title 49, Sec. 45), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345).

Pursuant to Rule 12 of this court appellant submitted a statement as to jurisdiction, and on October 10, 1932, the court found that probable jurisdiction had been shown.

THE QUESTION.

The question raised is whether the appellee, an independently operated electric line, is a carrier as defined in Section 20a (1) of the Interstate Commerce act. Section 20a declares that it shall be unlawful for any carrier by railroad subject to this act ("except a street suburban or interurban electric railway which is not operated as a part of a general steam railroad system of transportation") to issue securities or to assume obligations without first having obtained the authorization therefor from the Interstate Commerce Commission. As stated by appellant in its brief, the sole question here is whether appellee, an independently operated electric railroad, is an "electric interurban railway," within the meaning of the excepting clause of paragraph 1 of Section 20a.

THE STATUTE.

The pertinent provisions of the Interstate Commerce act are set forth in the Appendix.

INACCURATE STATEMENTS OF FACT IN APPELLANT'S BRIEF.

Appellant's brief, contains many inaccuracies and partial statements, that are apt to mislead unless corrected. Some of them are so serious as to require the following observations:

At the bottom of page 3, appellant's brief, the statement is: "Of the total route miles of track, only 14.66 per cent represents tracks in city streets. (R. 50.)" The statement in the record, at page 50, is: "The total route miles of track operated in city streets is 20.229, which is 14.66 per cent of the total route miles of track." Obviously, if 20.229 represents route miles of track operated in city streets, and all of appellees main line is double track ex-

cept a fraction more than 5 miles then there are approximately 40 miles of track operated in city streets. (R. 50.)

At the top of page 4, appellant's brief, the fact that the tracks of the Chicago Rapid Transit Company, used by the appellee, are elevated tracks, and that such elevated tracks start at Sixty-third and Dorchester Streets on the south side of Chicago and run northerly through the Loop district, where the main Chicago passenger terminal is located, is wholly disregarded. The Chicago Rapid Transit Company operates the intramural city service over the elevated structure in Chicago and is incorporated under the General Railroad Act of Illinois. (R. 48.)

At the middle of page 4, appellant's brief, the statement is made that in Milwaukee, appellee operates a distance of 2.67 miles over the tracks of a company owned by it—the Chicago and Milwaukee Electric Railway Company; but the important point, that such operation is through the streets and that street cars also operate over the line from Harrison Street to Oklahoma Boulevard, and that such operation is under an ordinance authorizing a predecessor respondent to "operate its interurban cars" over such tracks, is wholly disregarded. (R. 49.)

In the first paragraph of appellant's brief, on page 5, reference is made to the number of miles of track in paved streets, but it refers to "appellee's total owned tracks" and disregards many miles of track in streets in the city of Milwaukee owned by the Chicago and Milwaukee Electric Railway Company, which company in turn is owned by the appellee (R. 50), and it further disregards 7.43 route miles of track in Waukegan, used in city street car service, of which 3.29 miles are also used in interurban operation. (R. 19.) The fact of the matter is that 6.58 route miles of appellee's track are laid in paved streets, 0.197 route miles are laid in unpaved portions of city streets, 2.877 route miles are laid in unpaved street area, the track zone not being used for street purposes, and in

addition the appellee owns the Chicago and Milwaukee Electric Railway Company, over which tracks it operates in the city of Milwaukee for 2.625 route miles of track in city streets, and owns and operates 7.43 route miles of track in Waukegan, of which 3.29 miles are used in interurban operation. (R. 19.)

The last paragraph on page 5 of appellant's brief makes the statement that the bridges on appellee's line are built according to steam railroad specifications and standards and "are suitable for the operation of standard freight cars of steam railroads. (R. 51.)" The facts are that the bridges "with the aid and by means of gauntlet tracks in some instances, to permit clearances, are suitable for the operation of standard freight cars of steam railroads." (R. 19.)

The last sentence in appellant's brief, on page 5, states that the load capacity of the bridges on appellee's owned main line will support the average steam railroad train, but this statement entirely disregards the further statement that "neither the viaduct used by respondent entering Milwaukee nor the elevated structure used by respondent in Chicago will support steam railroad trains" (R. 19), and further disregards the statement that "a regular train of either the Chicago and North Western or the Chicago, Milwaukee, St. Paul & Pacific could not be operated over the Shore Line between Chicago and Milwaukee" (R. 20), and also disregards the statement that "on 22.73 per cent of main line route miles, respondents cannot handle steam railroad equipment," (R. 20), and the following statement: "It is impossible for respondent to handle carload freight in standard railroad freight equipment on 31.47 route miles of track." (R. 59.)

At the top of page 6, appellant's brief, the statement is made that appellee's tracks are physically connected with those of four steam railroads at thirteen points. The statement omits a part of the same sentence, which shows con-

nections with three electric railroads at three points on its line (R. 52).

At the bottom of page 6, appellant's brief, with regard to passenger stations maintained by appellee, many essential facts have been omitted. There are 224 stations or stopping points on appellee's entire system of railroad at which it receives and discharges passengers. At 51 of these stations, agents are maintained. There are no agents at any of the other stations. The main passenger station of appellee in Chicago is in a store building on Wabash Avenue between Adams Street and Jackson Boulevard, having a front width of 25 feet and being connected with the elevated structure of the Chicago Rapid Transit Company by a bridge leading to the elevated platform above the sidewalk. All stations on the elevated structure of the Chicago Rapid Transit Company in Chicago used by appellee are used in common with the Rapid Transit Company, and appellee conducts no freight business at any of these common stations. Several of the stations used by appellee on its owned line outside of Chicago are in store buildings adjacent to track on city streets. (R. 53.)

At the top of page 7, appellant's brief, the statement is made that appellee uses 600 volts direct current for its power, but the important fact that the use of higher voltage than 600 on lines that operate over paved streets, as do lines of appellee, would create a hazardous condition for the public in the event the line broke and the wire dropped is entirely disregarded. (R. 55.) In the same paragraph of appellant's brief the statement is made that the Pennsylvania Railroad is increasing its voltage for its terminal operations at New York City, but the fact that it is increasing its voltage from 600 volts to 11,000 volts is not mentioned. (R. 55.)

The last paragraph of appellant's brief, on page 7, disregards many important facts. Of the seven electric locomotives that appellee owns, five are operated by power

transmitted from the trolley wire and two are electric storage battery locomotives. The heaviest of these locomotives is 70 tons and the lightest 50 tons, whereas of electric locomotives used on electrified sections of steam railroads the lightest, shown by evidence, is 100 tons, and the heaviest is 288 tons. The two heaviest locomotives owned by appellee will haul 1200 tons per train, three of the locomotives will haul 600 tons per train, and two will haul 400 tons per train. Steam railroads haul several thousand tons in a train. (R. 55.)

In the same last paragraph, on page 7 of appellant's brief, the statement is made that appellee has within the past five years used steam locomotives owned by it for hauling revenue freight. The facts relative to this subject are not mentioned by appellant, and they are important and show that during the period of the construction of the Skokie Valley Line and for a short time thereafter, appellee owned and used 12 steam locomotives in the construction of that line, and after its completion these locomotives were used by appellee in commercial freight business for a short period of time and then were sold, and that appellee does not now own or use any steam locomotives. (R. 20, 21.)

In the last paragraph on page 7 of appellant's brief, the statement with reference to less than carload merchandise dispatch freight and baggage type of passenger car is a half statement. The widest car is 9 feet 5½ inches, but no baggage type car wider than 9 feet can be used in the cities of Chicago and Milwaukee, as a car greater than 9 feet in width cannot operate on the tracks used by appellee in either of these cities. The capacity of these baggage type cars is from 20 to 35 thousand pounds. (R. 55.)

In the last paragraph on page 7 of appellant's brief, with reference to the ownership and use of refrigerator cars, the facts concerning these cars are entirely disregarded. Appellee owns five refrigerator cars which are

similar to merchandise dispatch cars, two of which are used exclusively for cooling and storing perishable freight. (R. 21-30.)

In the last paragraph on page 7 of appellant's brief, and the first paragraph on page 8, the statement with reference to the ownership of freight cars by appellee is a half statement. Of the 206 freight cars owned, 71 are dump cars, two are tank cars used for weed killing, five are refrigerator cars equipped with electric refrigeration, and the dump cars are occasionally used in commercial service for hauling sand, gravel and stone where necessary to dump such material along the side of the tracks or off trestles. Appellee owns 114 freight cars which can be interchanged with steam railroads, but the other freight cars are too light in construction to be accepted by steam railroads. (R. 55, 56.) Appellee owns an average of 1.49 freight cars per mile of road, while the Chicago, Milwaukee, St. Paul & Pacific owns an average of 6.29 freight cars per mile of road—the Chicago and North Western owns an average of 8.05 freight cars per mile of road—and the Minneapolis, St. Paul and Sault Ste. Marie owns an average of 5.06 freight cars per mile of road. Class I steam railroads in the United States own an average of 9.7 freight cars per mile of road. (R. 56.)

There is an obvious typographical error at the top of page 8 of appellant's brief, where the statement is made that the cars have a capacity of "eighty thousand tons." This no doubt means "eighty thousand lbs."

The second paragraph on page 8 of appellant's brief has to do with appellee's passenger equipment. Many essential facts relating to this equipment are omitted, resulting in a misleading half statement. The widest passenger car used by appellee is 9 feet and the longest is 56 feet ¾ inch, whereas the narrowest steam railroad car shown of record is 10 feet in width, and the shortest is 72 feet 7½ inches in length. Appellee's passenger equipment has 4-wheel

trucks, whereas the passenger equipment of steam railroads in general use have 6-wheel trucks. The curvatures on the line of appellee are too sharp to permit the operation of cars with 6-wheel trucks. Radial drawbars are necessary on appellee's cars to permit trains to operate around short curves, and more than 40 passenger cars of appellee are street cars which are used exclusively in street car operation. (R. 56, 57.)

The middle paragraph on page 9 of appellant's brief sets forth certain facts relating to the passenger trains and service of appellee, but again the statement omits important facts which results in the statement being misleading. The passenger service of appellee is performed in comparatively small train units ranging from a single car to four or five cars per train. There are no single car trains operated by either of the paralleling steam railroads. A substantial part of the main line passenger service of appellee is performed over tracks laid in city streets and its main line trains into and out of Chicago run over the elevated structure of the Chicago Rapid Transit Company. The speed of trains of appellee is rigidly restricted at many places by state, city, and village authority, and arbitrary stops are also required by such authority. (R. 58.) Passengers on the interurban trains of appellee to and from Waukegan are given free transfers which permit them to ride to any point on the street car system within Waukegan. (R. 50.) The Waukegan street cars use the main line tracks south from Waukegan to Great Lakes Naval Training Station in common with appellee's interurban express trains. (R. 50.)

At the top of page 10, appellant's brief, the statement is made that appellee operates its trains under rules substantially similar to the Standard Code of Train Rules of the American Railway Association, which statement disregards entirely the facts which show important and significant variations and deviations from the Standard Code

of Train Rules of the American Railway Association. Some of appellee's rules are substantially similar, but appellee's operating rules are different in many substantial respects. For example, appellee's Code of Train Rules caution motormen to exercise great care when a vehicle is being drawn ahead of or alongside of the train. Motormen and conductors must see to it that all cars are equipped with destination signs which must be displayed. Appellee does not use symbols in employees' time tables such as are used by steam railroads. Appellee does not use any through communicating signal appliances from car to car in operating trains such as are provided for in the Standard Code of Rules governing steam railroads. (R. 22.)

The paragraph at the bottom of page 10 of appellant's brief is again misleading because of omissions. Appellee derives 78 per cent of its total revenue from passenger service and 22 per cent of its total revenue from freight service, of which the greater part is derived from merchandise dispatch service performed in baggage type cars. Class I steam railroads for the United States derive about 14.7 per cent of their total revenues from passenger service and 76.6 per cent of their revenue from freight traffic. In 1928 Class I steam railroads derived more than 65.14 per cent of their total revenues from the transportation of interline freight. Appellee derives 8.47 per cent of its total revenues from the transportation of interline freight. The Interstate Commerce Commission prescribes a form for compiling freight statistics for steam railroads, which classifies the business handled into 157 commodities. During the years 1929 and 1930 appellee did not handle 56 of these commodities, while the steam railroads in the same territory handled substantially all of these commodities. Appellee handles practically no livestock, no grain, packing house products, poultry or eggs, and has no grain elevators or stockyards on its lines. (R. 60, 61.)

STATEMENT.

Appellee is a corporation organized under the General Railroad Act of Illinois (Chapter 114 Cahill's 1921 Illinois Revised Statutes). There are but two statutory enactments in Illinois under which rail carriers may be organized, one is the General Railroad Act and the other is the General Incorporation Act. The General Incorporation Act is commonly used for the organization of street railways and under it the street railway has limited powers of eminent domain. Practically all rail carriers, save street railways, organized in Illinois, are organized under the so-called General Railroad Act because of the very limited powers of eminent domain given corporations organized under the General Incorporation Act. The Chicago Rapid Transit Company, which operates the intramural city service over the elevated structure in Chicago is incorporated under the General Railroad Act of Illinois. (R. 48)

The Bluff City Electric Street Railway Company, a street railroad, was the original company out of which the properties of the appellee developed. The Bluff City line was in existence prior to 1905. On July 1, 1916, the receiver of the Chicago and Milwaukee Electric Railroad Company of Illinois and the Chicago and Milwaukee Electric Railroad Company of Wisconsin sold at receiver's sale these two properties to the Chicago North Shore and Milwaukee Railroad. As the result of a later reorganization, at 12:01 a. m. on July 1, 1923, the railroad property of that company was conveyed to the Chicago North Shore and Milwaukee Railroad Company. On October 6, 1924, this latter company was consolidated with the Chicago North Shore and Northern Railroad, an Illinois intrastate railway, under the corporate name, Chicago North Shore and Milwaukee Railroad Company, which has owned and operated the properties at all times since then. (R. 48)

The first commercially successful electric railway in the United States was a street railway which started operation

in Richmond, Va., in February, 1888. Between 1890 and 1894 there was a rapid development of electric street railways. Such lines were in operation at Chicago, Cleveland, Toronto, Indianapolis and elsewhere at that time. In the growth and development of the electrically operated railways, there were finally evolved four classes of such railways, viz: (a) street or urban railways, (b) suburban railways, (c) interurban railways and (d) electrified sections of steam railroads. (R. 17)

The appellee is not a steam railroad. It is not owned by a steam railroad. It is not operated as a part of any steam railroad system. It is not an electrified section of a steam railroad. The appellee is an electric railroad. It performs a street car service, a suburban service and an interurban service. The property of the predecessor of appellee was not taken under federal control and operation during the war. There are only four kinds or classes of electric railroads, namely, urban, suburban, interurban and electrified sections of steam railroads. There is not now and never has been any other kind of an electric railway. (R. 18)

The appellee operates a high speed electric railroad between Chicago, Ill., and Milwaukee, Wisc. Its main terminals are in Chicago and Milwaukee with branch line terminals in the cities of Waukegan, Illinois, and Mundelein, Illinois. (R. 49) The appellee has no interchange connections with steam railroads either at its terminal in Chicago or at its terminal in Milwaukee. (R. 59) It has such interchange at certain intermediate points. Its principal interchange point is Rondout, Ill. (R. 42)

The operation of appellee in Chicago is over the elevated tracks of the Chicago Rapid Transit Company from 63d and Dorchester Streets on the south side of Chicago, northerly through the Loop district, over the elevated structure to a point at Leland and Wilson Avenues on the north side of Chicago, a distance of approximately 16 miles, thence northerly through Chicago and Evanston to Wilmette, a

distance of approximately 8 miles, over elevated, dirt-fill tracks, leased from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which is used jointly with the Rapid Transit Company. (R. 49)

The "Shore Line" of appellee continues north from Linden Avenue in Wilmette through Kenilworth, Winnetka, Glencoe, Highland Park, Highwood, Lake Forest, Lake Bluff, and North Chicago Junction, where it joins with the Skokie Valley line to Zion City and State Line, a distance of 31.77 miles. (R. 49)

The "Skokie Valley" line departs from the Shore line route at Howard Street, the north city limit of Chicago, and runs west about 3 miles to Niles Center, and thence northerly, paralleling the Shore line, to a junction with the Shore line at North Chicago Junction, a distance of 36.29 miles. (R. 49)

From State Line the road continues north via Kenosha and Racine to Harrison Street, Milwaukee, a distance of 35.92 miles. From Harrison Street the operation is through the city streets over the tracks of the Chicago and Milwaukee Electric Railway Company, which is owned by appellee, a distance of 2.67 route miles. This operation is in common with vehicular traffic and is controlled in part by "stop and go" lights, and is under an ordinance authorizing a predecessor of appellee to "operate its interurban cars" over such tracks. (R. 49)

The Libertyville branch extends from Lake Bluff on the Shore line to Rondout, Libertyville, and Mundelein, a distance of 8.8 route miles. The Waukegan branch extends from North Chicago Junction into the city of Waukegan, a distance of 3.29 miles. Appellee performs all of the street car service in Waukegan. Approximately 12 cars are used in this service. The Chicago-Waukegan interurban express trains use the street car tracks in Waukegan. The Waukegan street cars use the main line tracks south from Waukegan to Great Lakes Naval Training Station in common with

interurban express trains. The operation of street cars and of the Chicago-Waukegan interurban express trains in Waukegan is in common with other vehicular traffic on the streets. Passengers on the interurban trains of appellee to and from Waukegan are given free transfers which permit them to ride to any point on the street car system within Waukegan. (R. 49, 50)

The total route miles of main line owned and operated by the appellee is 138.38. The total miles of second track is 132.82. The total miles of yard and other track is 42.60. The total number of miles of all track is 313.81. The total route miles of track operated in city streets is 20.229, which is 14.66 per cent of the total route miles of track. Appellee operates on many of the city streets in common with street cars and vehicular traffic. (R. 50)

On 22.73 per cent of main line route miles appellee cannot handle steam railroad equipment. A regular train of either the Chicago and Northwestern or the Chicago, Milwaukee, St. Paul and Pacific cannot be operated over the Shore line between Chicago and Milwaukee. Appellee does not operate any freight trains south of East Prairie road on the Skokie Valley line. (R. 20) Appellee has many curves in its main line tracks as well as shop and yard tracks of 100 foot radius or less. This curvature in tracks is common to electric railways which must operate around street corners. Trains of steam railroads could not operate around such curves. (R. 51)

Appellee cannot handle standard freight equipment in either of its Chicago or Milwaukee terminals. It has no interchange track with steam railroads at either Chicago or Milwaukee and no reciprocal switching arrangement at either point.

Starting at 63d and Dorchester Avenue on the south side of Chicago, appellee performs no freight service for any industry or team track until it reaches McCormick Boulevard on the Skokie Valley line, 15 miles north of the Loop

district in Chicago. From that point north until the line of appellee reaches Harrison Street in Milwaukee, freight service is performed for industries and to sidings. Harrison Street is near the south limits of Milwaukee. The first freight siding on the Shore Line is near the south end of Highland Park, about 24 miles north from the Loop district in Chicago. (R. 20)

Appellee uses a baggage type of passenger car in transporting its less than carload merchandise dispatch freight (R. 55) from which it derives the greater part of its total revenue from freight service. (R. 60) Most of these cars are equipped with motors. Some are trailers. The baggage type cars wider than 9 feet are not used in the operation into the cities of Chicago and Milwaukee as a car greater than 9 feet in width cannot operate on the tracks used by respondent in either of these cities. The capacity of these cars is from 20,000 to 35,000 pounds. The average capacity of steam railroad freight cars is about 80,000 pounds, with a maximum capacity as high as 145,000 pounds. (R. 55)

Merchandise dispatch cars are used for handling less than carload shipments between most of the stations on appellee's line. This freight is handled in trains of one or more cars, usually a maximum of five cars. Most of the merchandise cars can be operated over the elevated structure in Chicago. A large portion of the operation in Chicago is from respondent's Montrose Avenue merchandise dispatch station located at Montrose Avenue and the Chicago Rapid Transit Company's right of way just west of Broadway, about 6 miles north of the Loop. (R. 21)

These merchandise dispatch cars are operated across the city of Chicago over the elevated tracks of the Rapid Transit Company to and from the station of appellee at 63d and Calumet Avenue, at the south end of the elevated system. The main merchandise receiving station of appellee is at Franklin and Austin Streets, just outside the Loop. Appellee has two other receiving stations for mer-

chandise freight at Polk and Racine Streets and at 41st and Union Avenue. (R. 21)

During the period of the construction of the Skokie Valley line and for a short time thereafter, appellee owned and used 12 steam locomotives in the construction of that line and, after its completion, these locomotives were used by respondent in commercial freight business for a short period of time and then were sold. Appellee does not now own or use any steam locomotives. It owns five refrigerator cars which are similar to the merchandise dispatch cars. Two of these refrigerator cars are used exclusively for cooling and storing perishable freight. They are not used to transport freight. Appellee's rolling equipment includes a number of ferry trucks or containers which are used to haul freight from the shipper to the appellee's depots by tractors and are then mounted on specially built flat cars to which they are fastened and are transported in that manner between Chicago and Milwaukee and between Chicago and Racine. There ferry trucks, or containers, are used for the same purpose as the container maintained by the Chicago and Northwestern Railway, but the character of the ferry trucks and the manner of handling them by the appellee are different from the container of the Chicago and Northwestern and its manner of handling such containers. (R. 21)

The track on the elevated system in Chicago from 63d and Dorchester to Leland Avenue is built on an elevated structure. All this track is third rail type transmission. (R. 21) There is a gauntlet track for a distance north of Howard Street on the tracks leased from the Chicago, Milwaukee, St. Paul and Pacific Railroad, and there the current is fed through an overhead trolley. The overhead trolley and gauntlet track are necessary to enable the Chicago Rapid Transit Company to switch certain freight cars for the Chicago, Milwaukee, St. Paul & Pacific Railroad. (R. 20) The gauntlet track is installed and used to throw

freight equipment away from the third rail. These freight trains are operated only at night when there are long intervals between passenger trains and in order to operate over these gauntlet tracks it is necessary for a brakeman to throw the switch at each end of the gauntlet. (R. 21)

Appellee's standard passenger fares are 3.6 cents per mile, the same as the standard fare generally in effect on steam railroads. The commutation fares of appellee are higher than the commutation fares of the Chicago and Northwestern. The appellee and the Chicago and Northwestern are in direct competition with each other in their through passenger service, their limited service to Waukegan, and their suburban and commuter service. Appellee also competes with busses and boat lines. (R. 22)

Appellee operates its trains under train rules adapted to its requirements. Some of these rules are substantially similar to the standard code of train rules of the American Railway Association, under which steam railroads operate. In its operation over the elevated loop tracks of the Chicago Rapid Transit Company in Chicago, appellee is governed by the rules of the Rapid Transit Company. Appellee operates its trains under train orders, clearance cards, meet orders, changes in orders, and under certain other rules as to superior and inferior trains, which are similar to the rules followed by steam railroads. But appellee's operating rules are different in many substantial respects from the standard code of train rules of the American Railway Association. Appellee's code of train rules caution motormen to exercise great care when a vehicle is being drawn ahead of or alongside of the train. Motormen and conductors must see to it that all cars are equipped with destination signs, which must be displayed. Appellee does not use symbols in employees' time tables such as are used by steam railroads. Appellee does not use any through communicating signal appliances from car to car in operating trains such as are provided for in the standard code of rules governing steam railroads. (R. 22)

The appellee has certain standards of construction and of maintenance that are adaptable to certain divisions and certain sections of divisions of its line. Appellee has standards as to the weight of rail on certain divisions, which weight is adhered to in replacement and renewals. There is no such thing as a standard road bed construction. The only thing that is standard about road bed construction is in the gauge. There are still some narrow gauge railroads. The standard of road bed construction varies considerably on different parts of the same railroad and the construction on different railroads is in many respects different. (R. 22)

Appellee's tracks entering its shops come out of the highway around very sharp curves and short switches. Neither a steam locomotive nor a steam railroad passenger car could be handled around these curves. (R. 22)

In its operation over and through city streets appellee is required to observe the municipal traffic regulations, such as "Stop and Go" signals at street intersections and at other points. (R. 22)

Appellee maintains on its entire system of railroad 224 stations or stopping points at which it receives and discharges passengers. At 51 of these stations there is a station agent who sells passenger tickets and performs other duties customarily performed by station agents. At 96 of these points the appellee maintains shelter sheds and platforms. At 35 of these points appellee maintains platforms only. At 42 points certain of the trains stop at streets or highways, where no facilities or platforms are provided. At many of the stations there are no facilities for handling freight. All passenger stations within Chicago are owned by the Chicago Rapid Transit Company and are used by appellee in common with that company. No freight business is handled at any of these stations. (R. 20)

Grades as high as 7 per cent are encountered in the main line track of appellee. The Skokie Valley line connects at

Howard Street with the Shore line and has a grade of 3 per cent at that point. It also has a grade of 1.6 over a viaduct or bridge that crosses the highway near the sanitary district plant. Appellee uses a short temporary crossover track during construction work in paved streets. All main line trains operate over these temporary crossover tracks. It would be impossible for steam line trains to use this type of crossover track. (R. 52)

The main passenger station of appellee in Chicago is in a store building having a front width of 25 feet on Wabash Avenue between Adams Street and Jackson Boulevard. This station is connected with the elevated structure of the Chicago Rapid Transit Company by a bridge leading to the elevated platform above the sidewalk. All stations on the elevated structure of the Chicago Rapid Transit Company in Chicago used by the appellee are used in common with the Rapid Transit Company. Appellee conducts no freight business at any of these stations. Several stations used by appellee on its owned line outside of Chicago are in store buildings adjacent to track on city streets. (R. 53)

Appellee owns a total of 7 electric locomotives. Two of them are electric storage battery locomotives; 5 of them are operated by power transmitted from the trolley wire. Two of these locomotives will haul 1,200 tons per train; 3 will haul 600 tons per train, and 2 will haul 400 tons per train. Steam railroads haul several thousand tons in a train. These locomotives weight 70, 60, and 50 tons, respectively. The lightest weight of electric locomotive used on electrified section of steam railroads shown by evidence is 100 tons, and the heaviest weight as much as 288 tons. (R. 55)

The Chicago, Milwaukee, St. Paul and Pacific Railroad owns an average of 6.29 freight cars per mile of road. The Chicago and Northwestern owns an average of 8.05 freight cars per mile of road. The Minneapolis, St. Paul and Sault Ste. Marie owns an average of 5.06 freight cars per mile of

road. Class 1 steam railroads in the United States own an average of 9.7 freight cars per mile of road. The North Shore owns an average of 1.49 freight cars per mile of road.

Most of the passenger and baggage car equipment of appellee is motorized. A few passenger cars have control apparatus without motors so that they may be placed ahead of motor cars in trains. The widest passenger car used by appellee is 9 feet. The longest car is 56′ 3/4″. The narrowest of steam railroad cars shown of record is 10 feet in width and the shortest in length is 72′ 7 1/2″. The passenger equipment of appellee has 4-wheel trucks. The passenger equipment of steam railroads in general use have 6-wheel trucks. The curvatures on the line of appellee are too sharp to permit the operation of cars with 6-wheel trucks. Radial draw bars are used on appellee's cars to permit trains to operate around short curves. (R. 56)

The classification of commodities prescribed by the Interstate Commerce Commission for compiling freight statistics for steam railroads includes 157 commodities. During the years 1929 and 1930 the appellee did not handle 56 of these commodities. The steam railroads in the same territory handled substantially all of these commodities. Appellee handled practically no livestock, no grain, packing-house products, poultry or eggs. Appellee has no grain elevators or stockyards on its lines. (R. 60)

Appellee derives 78 per cent of its total revenue from passenger service. Class I steam railroads for the United States derive about 14.7 per cent of their total revenues from passenger service. Appellee derives 22 per cent of its total revenue from freight service, of which the greater part is derived from the local merchandise dispatch service performed in the baggage type of cars. Class I steam railroads derive 76.6 per cent of their revenue from freight traffic. Appellee derives 8.47 per cent of its total revenues from the transportation of interline freight. Class I steam railroads derived more than 65.14 per cent of their total

revenues from the transportation of interline freight in 1928. (R. 60-61)

Appellee operates through a number of cities and towns under rights granted by franchises or ordinances. These restrictions, prohibitions, and obligations are many and varied. In all but 2 of 14 towns through which appellee operates under franchise the operation must be by electricity. In all but 3 such towns steam operation is prohibited. In 5 safety stops are required. In 8 appellee must pave the streets between its tracks. In 7 appellee must stop at street intersections. In 9 appellee must light streets and crossings. In 4 appellee must remove snow. In 2 appellee must sprinkle the streets. In 6 freight operation is prohibited. In 5 appellee must carry policemen and firemen free of charge. (R. 61)

During the calendar year 1930 the total operating revenues of appellee were $6,581,961.40. Of that amount, $4,706,855.01, or approximately 78 per cent, was derived from passenger service and the remainder, $1,384,547.58, was derived from freight service. The revenue derived from carload freight handled by appellee was 8.63 per cent of the total revenue. The revenue derived from less than carload freight was 11.47 per cent of the total revenue. The revenue from all freight, including mail, express and milk was 21.03 per cent of the total revenue. Of the revenue from carloads, 17.25 per cent was from traffic local to the appellee and 82.75 per cent was from interline traffic. Of the revenue from less than carload freight, 88.4 per cent was from local traffic and 11.58 per cent from interline traffic. Of the total revenue from freight over 60 per cent was derived from less than carload freight. (R. 23-24)

Appellee's methods of business solicitation are similar in some respects to the methods of steam railroads. It advertises in certain trade papers used by steam railroads. It is a member or associate member of certain traffic or tariff organizations to which steam railroads belong. It is a

party to tariffs which apply to traffic throughout the United States and to traffic between the United States and Canada. It maintains no off-line soliciting agents such as are maintained by steam railroads. (R. 24)

The securities issued by appellee each year since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual reports of appellee filed with that commission. Each report has shown the character of business handled by appellee and has also shown that the securities have been issued with the approval and under the authority of the regulating commissions of Wisconsin and Illinois. The form of annual report prescribed by the Interstate Commerce Commission for use by electric lines requires that the character and par value of securities issued during the year be reported and that the authority under which issued be shown. In the year 1924, through inadvertence, the annual report of appellee to that commission failed to show the authority under which the securities were issued. An official of the commission directed appellee's attention to that omission by letter in January, 1926. An official of appellee advised the Commission that the securities reported in 1924 were issued under authority of the regulating commissions of Wisconsin and Illinois. (R. 24)

Prior to March, 1923, the general counsel of appellee filed a brief with the Interstate Commerce Commission in which the appellee took the position that it should be excluded from section 15a of the interstate commerce act because it was an interurban electric railroad not engaged in the general transportation of freight and not operated as a part of a general steam railroad system of transportation. On March 29, 1923, the director of the Bureau of Finance of the commission advised the general counsel that: (R. 24)

> "unless you are later advised to the contrary, this carrier will not be required to file returns in response to the commission's orders dated January 16, 1922, and

March 16, 1922, 'in the matter of the recovery and payment of excess railway operating income under the provisions of section 15a of the interstate commerce act.'" (R. 24)

On April 19, 1923, the general counsel for appellee addressed a letter to the director of the Bureau of Finance of the commission referring to the brief previously filed and the correspondence had concerning the application of section 15a to appellee. On April 25, 1923, the director of the Bureau of Finance of the Commission advised appellee that:

"unless you are later advised to the contrary, no further information will be required in connection with this order." (R. 25)

Appellee has not been advised to the contrary.

In its 35th annual report for 1921 the Commission stated that some difficulty had arisen in the construction of Section 20a in its application to electric lines and pointed out that under the law (R. 63)

"We have no jurisdiction over the issuance of securities of a 'street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.' Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. The use of electricity as motive power for railways is rapidly increasing. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under Section 15a of the act we are given authority to include in groups of carriers for rate making purposes such interurban electric lines as are engaged in the general transportation of freight. It seems desirable that Section 20a of the interstate commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section." (R. 63)

It repeated that recommendation in its annnual reports of 1923, 1924 and 1925. It made no special mention of electric railways in its annual reports of 1926 and 1927.

In its annual report for the year 1929 the Commission made the following statement: (R. 63)

> "In our annual reports to the Congress for various years since the enactment of the amendments of 1920, we have recommended that Section 20a, relating to the issuance of securities, be so amended as to apply to electric railway companies engaged in the general transportation of freight. Experience in the administration of the act, as well as changes in the conditions affecting electric railway companies, seem to require that consideration be given to the general subject of the application of various sections of the statute to those companies."

After citing the excluding language in the various sections of the Act, the Commission said in part as follows: (R. 25)

> "Practically all of the interurban electric lines of the country are engaged to a greater or less extent in the transportation of freight. Ordinarily these lines have a preponderance of passenger traffic, but the large diversion of such traffic to highways through the increasing use of automobiles has led these carriers to endeavor to recoup these losses through increased participation in freight traffic."

After commenting on the development of interurban electric lines and the varying conditions under which they operate, the Commission concluded its comment in the 1928 annual report with this recommendation: (R. 25)

> "That the present exemption provisions of paragraph (22) of section 1, paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, *be amended by substituting provisions exempting all electric railways except such as inter-*

change standard freight equipment with steam railways, and participate in through interstate freight rates with such carriers; provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned." (Italics ours.)

Since July, 1916, when the Chicago North Shore & Milwaukee Railroad, the immediate predecessor of appellee, acquired the properties, the appellee and predecessors have issued securities aggregating $71,327,200 par value. Of that total, $9,664,600 were issued by the predecessor company prior to March 1, 1920, and the remainder have been issued since that date. All of these securities were issued upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. There were outstanding in the hands of the public as of April 30, 1931, a total of $42,935,608.07 par value of securities issued by appellee and its predecessors. Of that amount, $4,000,000 in securities were issued prior to March 1, 1920, and $38,935,608.07 were issued since that date. There is in the treasury of the appellee or pledged under the first and refunding mortgages a total of $9,291,800 par value of securities. In December, 1930, $2,500,000 par value of securities were issued by appellee upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. All securities issued by appellee since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual report of appellee filed with that commission. This report requires to be shown, and the appellee has shown, that the securities therein reported were issued under the authority and with the approval of the regulating commissions of Illinois and Wisconsin. (R. 62)

Since March 1, 1920, more than $239,000,000 par value of securities have been issued by electric railroads reporting to the Interstate Commerce Commission, other than appellee without the approval or authority of the Interstate Commerce Commission. (R. 62)

The Interstate Commerce Commission has prescribed a uniform system of accounts for electric railways, which governs the accounting system of appellee. That Commission prescribes a different and more comprehensive classification of accounts for use by steam railroads. In March, 1913, Congress enacted the valuation act, section 19a, of the interstate commerce act 37 Stat. L. 701, which requires the commission to ascertain and report the value of all property owned or used by every common carrier subject to the provisions of the act. The property of the appellee has not been valued by the commission. The commission has not reported the value of any independently operated electric railroad. The Commission has made tentative valuations or final valuations of the property of all steam railroads, subject to the interstate commerce act. (R. 62)

Since its organization appellee has been given the status of an interurban electric railway by official acts of construction by the Railroad Commission of Wisconsin, the State regulating body of Wisconsin, and by the Illinois Commerce Commission, the State regulatory body of Illinois. Each of these tribunals has assumed jurisdiction over the securities issued by appellee, of which fact the Interstate Commerce Commission has been apprised in the annual reports of the appellee to that commission. (R. 63)

Exhibits and evidence of record which correctly portray the facts show that 112 electric railways filed tariffs with the Interstate Commerce Commission, which published freight rates applicable locally to those railroads, and that of those railroads 64 participated jointly with steam railroads in interline tariff and 42 participated jointly in interline tariffs with other electric railroads during the year

1919. The Spokane Inland Empire R. R. Company, an electric line, maintained tariffs in 1911 in which it participated generally in interline freight traffic with steam railroads between points throughout the United States. The Southwest Missouri Railroad Company during the years 1927 and 1928 participated generally in interline freight traffic with steam railroads by means of published tariffs. (R. 61)

SUMMARY OF ARGUMENT.

1. It is clear from an examination of the legal history of the phrase "interurban electric railway" that Congress used it as descriptive of a class of independently operated electric railways as that phrase had the sanction of time and common usage. The court below correctly concluded as a matter of law that the phrase "street, suburban or interurban electric railway which is not operated as a part of a general steam railroad system of transportation" was used in section 20a of the Interstate Commerce Act in that sense. It is also apparent from the sense in which Congress used this phrase in section 20a and in other sections of the law that the fact that an interurban electric railroad interchanges freight and passenger traffic with steam railroads and competes for such traffic with steam and other forms of transportation would not change its character or make it any the less an interurban electric railroad. Appellee does not forfeit its character merely by complying with the duties imposed upon it by other and older provisions of the law in establishing through routes and interchange arrangements with steam railroads. *U. S. v. Munson S. S. Line*, 283 U. S. 43. There were and are only four classes of electric railways in this country, namely urban, suburban, interurban and electrified parts of steam railroads. In *Spokane & Inland Empire R. R. Co. v. U. S.*, 241 U. S. 344, the Court described the electric railroad there involved which handled freight and passenger traffic and

maintained freight and passenger rates on a national scale as an interurban electric railroad. There is striking similarity between the traffic characteristics of the Spokane line at the time of that decision and the traffic characteristics of appellee as it is today. Congress is presumed to have known of that decision and to have known that at the time of the amendments of 1920 the Interstate Commerce Commission had in numerous cases required the establishment of through routes and joint rates between interurban electric railroads and steam railroads, and that interurban electric railroads had developed at that time to the point where many or most of them engaged in a general way in the transportation of freight and passengers under through routes with steam railroads.

The court below correctly described the common characteristics of interurban electric railways as railways which use electric power in the transportation of passengers and freight, occupy city streets and highways in addition to private rights of way, stop cars or trains at street intersections and country highways for the reception and discharge of passengers, maintain loading platforms and shelter sheds without agents, have short radius curves, and operate part of their systems under municipal and village franchises, charters and restrictions, and correctly held that appellee has all of these characteristics.

2. By common consent and by contemporaneous construction of both federal and state authorities, the appellee has been described and treated as an interurban electric railway. In *Intrastate Fares of the Chicago North Shore & Milwaukee R. R. Within Illinois*, 62 I. C. C. 188, and in *Intrastate Fares of the Chicago North Shore & Milwaukee R. R. in Illinois and Wisconsin*, 136 I. C. C. 165, the Interstate Commerce Commission described the appellee as an interurban electric railroad. In its annual reports to Congress and by other informal acts the Commission has given the statute the construction relied upon by appellee. Such administrative and contemporaneous construction is en-

titled to great weight. *United States v. Minnesota,* 270 U. S. 181; *Logan v. Davis,* 233 U. S. 613; *Merritt v. Cameron,* 137 U. S. 542. Securities aggregating more than $39,000,000 have been issued in good faith by appellee from time to time with the knowledge and without objection of the Interstate Commerce Commission and under the specific authority of the regulating commissions of Wisconsin and Illinois. The acts of the regulating commissions of Wisconsin and Illinois in assuming jurisdiction by authorizing these securities are acts to which full faith and credit should be given under the Constitution and which under the doctrine of comity are entitled to highest respect. *Cooper v. Newell,* 173 U. S. 555; *Wisconsin v. Pelican Insurance Co.,* 127 U. S. 265.

3. As prior to and since the decision in *Omaha & Council Bluffs St. Ry. Co. v. I. C. C.,* 230 U. S. 324, made in June, 1913, interurban electric railroads as distinguished from street railroads have been held to be subject to the Interstate Commerce Act, Congress knew in enacting the comprehensive legislation of 1920 that interurban electric railroads would be subject to all of the provisions thereof that relate to common carriers by railroad unless specifically excluded. As independently operated electric railroads did not fall within all of the purposes sought to be reached by the new legislation or the mischief sought to be corrected, Congress excluded that class of railroads from certain of the amendments by adopting language which had the sanction of time and common usage. In giving the Commission control over the issuance of securities and over the extension and abandonment of lines, Congress was thinking in terms of steam railroads. It was well known at the time that investigations by the Commission of the financial affairs of certain important trunk lines had disclosed conditions which were deemed to be contrary to the public interest. It was also well known that many trunk lines operated through several states and that the exercise of authority by several states over the issuance of securities of such

carriers was not only cumbersome and expensive but was inadequate and brought about delay, uncertainty, and a total absence of uniformity of treatment. The reason for federal control over the securities of steam railroads did not exist as to independently operated electric railroads. Hence the exclusion of this class of railroads from section 20a and from certain other of the new provisions of the law enacted in 1920.

4. Appellee is clearly distinguishable from the Piedmont & Northern which was before the Court in *Piedmont & Northern Rwy. Co. v. I. C. C.*, 286 U. S. 299, where the Court construed the meaning of paragraphs 18 to 22, of section 1 of the Interstate Commerce Act, and held that the Piedmont & Northern was not an interurban electric railway as that phrase is used in section 1. The Court did not lay down a general rule in that case as to what constitutes an interurban electric railway within the meaning of section 1 or other sections of the Interstate Commerce Act. After making certain observations *inter alia* that the phrase "interurban electric railway" was not in 1920 commonly used to designate a carrier whose major activity was the transportation of interstate freight in trains of standard freight cars and that the business of the Piedmont & Northern is preeminently inte change interstate freight of national character in all essential respects conducted as is the business of steam freight carriers in the territory served, the Court concluded that the Piedmont & Northern is not an interurban electric railway. While the facts clearly distinguish the appellee from the Piedmont & Northern and while it is not necessary to argue that the particular purpose of paragraphs 18 to 22, inclusive, of section 1 is not the same as the purpose of section 20a, it is settled that the same phrase may have a different meaning in different connections in the same act, and in the *Piedmont case* the Court answered some of the contentions of the Piedmont as to the significance of the similarity of phraseology in other

sections of the act by this observation: "But it is so used with other purposes in view". *American Security Co. v. District of Columbia*, 224 U. S. 491, 494; *Alabama Midland Rwy. Co. v. I. C. C.*, 168 U. S. 144. Compare *Wight v. U. S.*, 167 U. S. 512.

6. Paragraph 11 of section 20a provides that any security issued or obligation assumed by a carrier subject to that section without the authority of the Interstate Commerce Commission shall be void, and that any such void security acquired by any person for value in good faith and without notice that it is void, entitles such person to hold the carrier and its directors, officers and attorneys jointly and severally liable for the full amount of damages sustained in a suit in any court of competent jurisdiction. Since 1920 the appellee has issued securities aggregating about $39,000,000, under state authority and without the authority of Interstate Commerce Commission, but with the knowledge and tacit sanction of that Commission. Other electric lines similarly situated have issued securities aggregating more than $239,000,000 since 1920 without the approval of the Interstate Commerce Commission and under authority of the state regulating bodies. If appellant's theory of the law be sustained, the effect under the statute if valid will be to make void the securities of the appellee and of other electric lines, the result of which may be a plethora of law suits for damages which staggers the imagination. Moreover, should the Court adopt appellant's theory of the law and hold that the appellee is not an interurban electric railway such a finding will raise for the appellee and for the whole electric railway industry a fog of uncertainty as to classification and jurisdiction which will make it impossible for any electric railway to know in advance of a decision by this Court what its status is under section 20a; and such a finding will work untold unjury to appellee and to the entire electric railway industry.

ARGUMENT.

Congress Used Phrase "Street, Suburban or Interurban Electric Railway" in Section 20a as Descriptive of a Class of Independently Operated Electric Railroads.

An examination of congressional acts dealing with electric railroads shows clearly enough that Congress used the phrase "street, suburban or interurban electric railways" as descriptive of classes of independently operated electric railways. These terms had the sanction of time and common usage. It was, therefore, quite natural for Congress to adopt them in the new provisions of the law of 1920 where it sought to exclude electric railways not operated as a part of a steam railroad system. That this is the true sense in which Congress used the phrase is apparent from the fact that in the Federal Control Act, the Railway Mail Pay Acts, the amendments of 1920 to the Interstate Commerce Act, and the Transportation Act, Congress recognized by name the only classes of electric railroads in this country, street, suburban, interurban and electrified parts of steam railroad systems.

In legislating as to common carriers by railroad, Congress adopted a distinct and fairly uniform policy with respect to electric lines. It made street, suburban or interurban electric lines subject to all of the new provisions when operated as a part of a steam railroad system. It provided that "street or interurban railways" which have their principal source of operating revenue from urban, suburban and interurban passenger traffic or the sale of power, heat or light, could not claim the benefits of the Federal Control Act or of sections 204 and 209 of the Transportation Act, and that an independently operated interurban electric railway which is not engaged in the general transportation of freight is not subject to section 15a of the Interstate Commerce Act. On the other hand, as the provisions of the law which deal with rates and charges make no distinction in steam railroads and interurban elec-

tric railroads Congress left with the Commission as complete control over the rates and charges of the one as of the other. *United States v. Village of Hubbard*, 266 U. S. 474.

The exclusion of interurban electric railways from section 20a and from other sections of the Interstate Commerce Act is in accordance with the discriminating policy shown by Congress in its treatment of various classes of common carriers since the passage of the original Act to Regulate Commerce in 1887. In the main the acts of Congress regulating common carriers have been aimed at steam railroads. It has deliberately made distinctions in various provisions of the law as between the various classes of common carriers dealt with. For example, common carrier *railroads* are required to post, publish and file their rates and tariffs. Telephone, telegraph and wireless carriers, whose rates and charges must be just and reasonable and non-discriminatory, need not publish, post or file them. Express and sleeping car companies are subject to the rule that their charges must be just, reasonable and non-discriminatory. This class of carrier is specifically excluded from section 15a.

Paragraph 11 of section 20 requires that a common carrier by *railroad* must issue a bill of lading for property and is made liable to the owner thereof for loss and damage caused by it or by any of its connections. This provision does not apply to the many other classes of common carriers which are subject to other provisions of the act. Congress has differentiated in many ways in the jurisdiction conferred on the Commission over common carriers by water. Transportation partly by railroad and partly by water when both are used in a common control, management or arrangement for through carriage, is subject to the act. Common carriers by water which are owned or controlled by a *railroad* with which they may or do compete for traffic are subject to the act, where that control or ownership is found by the Commission to be in the public

interest. Otherwise common carriers by water are not subject to the act. Car ferries are subject to the act when used as terminals for railroads.

There is nothing extraordinary in the fact that in the legislation of 1920 Congress excluded interurban electric railways from certain of the new provisions of the law which gave the Commission control over securities and more control over other matters affecting steam railroads. It has been the policy of Congress to proceed cautiously in enlarging the powers of the Commission over common carriers engaged in interstate commerce. It did not give the Commission the power to prescribe rates until 1906 and waited 33 years before it gave the Commission control over the issuance of securities and the abandonment and extension of lines of steam railroads.

The fact that in some of the statutes Congress saw fit to provide that the character of business performed by an interurban electric railroad determined whether it was subject to certain provisions of the statutes has been seized upon by the appellant as a basis for arguing that an interurban electric railroad ceases to be such when it engages in interline freight business with steam railroads, by the interchange of standard equipment or otherwise to some nebulous extent and when some of its operations are conducted in a manner similar to those of steam railroads. All railroads have some characteristics in common, whether their motive power be steam or electricity. In the *Omaha and Council Bluffs case*, 230 U. S. 324, this Court said that all recognize that

> "while there is a similarity between railroads and street railroads, there is also a difference".

There is a similarity between interurban electric railroads and steam railroads but there is also a difference. Each class has common characteristics in that each use rails and ties as road bed, they use cars to transport pas-

sengers and freight, they haul passengers, freight, mail and express, and they publish their rates and charges and interchange business with each other. Despite these common characteristics, no one in every day affairs experiences any difficulty by observation in distinguishing an interurban electric railroad from a steam railroad—no more difficulty, in fact, than would be experienced in distinguishing a horse from a mule, which also have common characteristics. No difficulty is encountered until an attempt is made to define the distinction. However, this difficulty will be minimized if instead of being guided by the things in which the interurban electric and the steam railroad are alike, one is guided by those things in which they are different. That an interurban electric railroad is different from a steam railroad cannot be questioned. These different characteristics should control the category.

The fact that street, suburban or interurban electric railways are included within section 20a and other of the new provisions of the legislation of 1920 when operated as a part of a steam railroad system of transportation is important as is the fact that even if independently operated an interurban electric railway, which is engaged in the general transportation of freight, is subject to section 15a but not on that account to section 20a and other of the amendments of 1920. This is an affirmative recognition by Congress that this class of electric railways do not lose their identity and character even when operated as a part of a steam railroad system or when engaged in the general transportation of freight.

Interurban railways as distinguished from street railways have always been subject to the provisions of the Interstate Commerce Act dealing with rates and charges and also those provisions which impose certain affirmative duties on carriers. Section 1 (4) makes it the duty of every common carrier to provide transportation (defined in paragraph 3 to include locomotives and cars, and all instrumen-

talities and facilities of shipment) upon reasonable request therefor and to establish through routes. Section 3 (3) makes it the duty of such carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines without discrimination. Paragraph 10 of section 1 makes it the duty of such a carrier to provide reasonable car service including the supply, movement and interchange of locomotives and cars used in transportation. It is unnecessary to argue that an interurban electric railway does not forfeit its character as such under the act from the fact that it complies with the duties imposed upon it by the Act to establish through routes and interchange facilities for the handling of freight and passenger traffic with steam railroads and other carriers, and then proceeds to use such routes and facilities.

The court below correctly concluded as a matter of law that appellee is an interurban electric railway not operated as a part of a steam railway system of transportation and therefore comes within the excepting clause in section 20a of the Interstate Commerce Act, and that the appellee is not a carrier or corporation within the meaning of those terms as used in section 20a. The court properly stated that among the common characteristics of interurban electric railways are, (a) they use electric power in the transportation of passengers or freight, or both, in intrastate and interstate commerce, (b) they occupy city streets and highways in addition to private rights of way, (c) they stop cars or trains at street intersections and country highways for the reception and discharge of passengers, (d) they maintain loading platforms and shelter sheds without agents, (e) they have short radius curves, and (f) operate part of their systems under municipal and village franchise authority and restrictions. The court held that appellee has all of these characteristics.

Legal History of the Phrase "Interurban Electric Railway."

In order to determine the kind or class of carrier by railroad that Congress had in mind when it used the phrase "interurban electric railway," it is necessary to go back and trace the legal history of this class of railroads from the time they started to develop down to the passage of the Transportation Act, 1920. This is not a difficult thing to do. It is obvious that in the absence of subsequent legislation changing or altering the meaning of the term "interurban electric railway," it now must be construed as having the same meaning it had when Congress used it in the Transportation Act, 1920.

The Government's position is that the term interurban electric railroad describes a class of electrically operated common carriers not organized for the purpose of or actually conducting a general freight and passenger business whose operations are confined principally to the carriage of passengers in a local city movement or in local movement between cities or towns in proximity to each other. This disregards the plain facts of history as found in statutory enactment, commission and other governmental reports, court decisions, and common usage by the general public.

It is undisputed that interurban electric railways developed from electric street railways, and this development was continuous through various stages up to the time of the passage of the Transportation Act, 1920. The first official recognition of interurban electric railways as a growing and important industry is to be found in the Bureau of the United States Census Report for the year 1902. In that report, at page 3, appears the following:

> "During the past three years there has been an extraordinary development of electric railways outside the limits of cities and villages, and a considerable proportion of these suburban and interurban lines are located on private rights of way and not on the public thoroughfares."

At page 105, same report:

> "More remarkable has been the growth of freight traffic on some of the lines. The report of the railway last mentioned shows that freight earnings are increasing from 20 to 30 per cent each year."

In the Bureau of the United States Census Report for the year 1907, at page 265, appears the following:

> "One of the leading features, if not indeed the principal one, of electric railway development during the period 1902 to 1907 was the extension of the interurban electric railways which are now to be found in almost every part of the country and which in many instances, by the extent of their operations, rival main lines of steam railroads."

The development of electric railways continued, and in 1910 we find Congress for the first time dealing specifically with them in a manner different from steam railroads. Section 15 (3), 36 Stat. L. 539, as amended in 1910, gives the Commission the power to require common carriers to establish joint rates and through routes, but the section qualifies this power in the following language:

> "The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare or charge between *street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business* and railroads of a different character." (Italics ours.)

The bill out of which came the amendment to Section 15 next above referred to, as introduced in Congress provided that

> "the Commission shall not, however, establish any through route, classification or rate between street, suburban or interurban electric passenger railways and railways of a different character."

The bill containing this language went to the Committee on Interstate Commerce, and public hearings were held. In the discussions before that Committee it was shown that the phrase used was ambiguous and might be construed as excluding interurban electric railways which did a freight business. Various parties appeared before the Committee and urged that interurban electric railways performed a freight business and that such lines should be included within the Commission's power to require the establishment of joint rates and through routes. The Committee accepted this view, and as the amendment was finally adopted it left the Commission jurisdiction to prescribe joint rates and through routes between interurban electric railroads and steam railroads. (See Senate Hearings, Vol. 18, pp. 1027-1042.)

Thus, in the year 1910 Congress by statutory enactment recognized the fact that there were at that time interurban electric railroads and street railroads carrying freight and physically qualified to interchange such freight with steam railroads.

Emphasizing this fact further are decisions of the Interstate Commerce Commission based upon the power given in Section 15 (3) as amended in 1910, wherein the Commission construed that amendment as a limitation of its powers in respect of street electric passenger-carrying railroads and not as to freight carrying interurban electric railroads. *Chicago, Ottawa & Peoria Railway Company v. C. & N. W. Railway Company*, 33 I. C. C. 573. *Michigan Railroad Company v. P. M. Railroad Company*, 74 I. C. C. 496.

Since 1910 the Commission in various decisions based on Section 15 (3) as amended, has ordered the establishment of through routes and joint rates between steam railroads and freight-carrying interurban electric railroads. *Cedar Rapids & Iowa City Ry. & Light Co. v. Chicago & North Western Ry. Co.*, 13 I. C. C. 250; *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co.*, 26 I. C. C. 226.

In 1913, judicial sanction was given by the Supreme Court of the United States to the proposition that interurban electric railroads had developed from street railways and performed a different class of service. In *Omaha & Council Bluffs Street Ry. Co. v. Interstate Commerce Commission,* 230 U. S. 324, decided June 9, 1913, the Court said *inter alia:*

> "But it is said that since 1887, when the act was passed, a new type of interurban railroad has been developed, which with electricity as a motive power uses larger cars and runs through the country from town to town, enabling the carrier to haul passengers, freight, express, and the mail for long distances at high speed. We are not dealing with such a case, but with a company chartered as a street railroad, doing a street railroad business, and hauling no freight."

So, then, in 1913, this Court recognized the fact that interurban railroads were common carriers of freight as well as passengers, express and mail; and further, that they operated "for long distances at high speed."

In the year 1916, an important description of an interurban electric railroad was contained in the decision of the Supreme Court of the United States in *Spokane & Inland Empire Railroad Co. v. United States,* 241 U. S. 344. The Supreme Court said:

> "The railroad company operated a street railway system in Spokane, Washington, and several *interurban electric lines,* one of which extended from Spokane to Coeur d'Alene, Idaho, a distance of about 40 miles. *Over this line passenger trains composed of two or more cars were operated, starting at a station near the center of Spokane and running for a mile and a quarter on the street railway tracks to the company's yards near the city limits, and thence over its private right of way to Coeur d'Alene. The road was standard gauge, with rails of standard weight, and the passenger trains were made up according to standard rail-*

road rules with markers to designate the trains, and were run on schedules and by train orders. Passengers traveled on tickets entitling them to ride to and from designated stations, at which regular stops were made, and express matter and baggage were carried on the passenger trains. The street-car business was entirely separate from that done by the interurban line, the employees of the one having nothing whatever to do with the other, and although stops were made by interurban trains within the city limits, and while on the street railway tracks, they were made solely for the purpose of taking on and letting off passengers to or from stations outside the city. *In addition to its passenger trains, the interurban line also operated freight trains, which, however, started from the company's yards and ran directly to Coeur d'Alene, and did not, therefore, enter upon the street railway tracks."* (Italics ours.)

In connection with the Spokane & Inland Empire decision, the record shows that at the time of the decision the freight revenues of the Spokane & Inland Empire were 20.3 per cent of its total revenues and that this interurban electric railroad had a general line of freight tariffs and transacted interline business with practically all steam railroads between all points throughout the United States.

It should be pointed out that the Supreme Court's description of the Spokane & Inland Empire is almost identical with the description of the appellee as it is today, with present freight revenues of 21.03 per cent of total operating revenues and having a general line of freight tariffs with steam railroads.

Congress was next called upon to consider the status of interurban electric railways when it passed the Federal Control Act of March 21, 1918. In that act, for the second time in statutory enactments, it used language differentiating electric railways and steam railroads as follows:

"Provided, however, that nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of

> operating revenue, urban, suburban or interurban passenger traffic, or sale of power, heat, light, or both."

By this provision Congress legislatively declared that an interurban electric railway might have freight revenues as its principal source of earnings. The fact is that several interurban electric railroads were taken under Federal control pursuant to this section of the Federal Control Act because their principal source of operating revenue was the transportation of freight. The appellee was not.

In this same year of 1918, on July 2d, Congress again for the second time in this year, and for the third time in statutory enactments, legislated specifically for electric railways and differentiated between them and steam railroads. This was the Railway Mail Pay Service on Urban and Interurban Electric Railways Act, 40 Stat. L. 748, passed on July 2, 1918. This act empowered the Commission

> "to fix and determine from time to time the fair and reasonable rates and compensation for transportation of mail matter by urban and interurban electric railway common carriers and the service connected therewith,"

and the act also contained this proviso:

> "That it shall be unlawful for any urban or interurban electric railroad to refuse to perform mail service at the rates or methods of compensation thus provided for such service when required by the Postmaster General so to do, and for such offense shall be fined one hundred dollars."

Congress had previously, in 1916, passed the Railway Mail Service Pay Act, 39 Stat. L. 412, giving the Commission the power to fix reasonable rates and compensation for the transportation of mail matter by railway common carriers.

In a case, decided in August, 1920, involving applications of electric lines for increased mail pay, entitled *Electric Railway Mail Pay,* 58 I. C. C. 455, the electric lines desiring to benefit from the higher rates established for steam railroads under Railway Mail Service Pay Act, 39 Stat. L. 412, just cited, contended before the Commission that as they were railway common carriers they were within the meaning of that term as used in the Railway Mail Service Pay Act of July 28, 1916. But the Commission held against them on account of the fact that Congress had, in July, 1918, passed a special railway mail pay act dealing with the rates of pay for the transportation of mail by urban and interurban electric railway common carriers, and therefore the electric lines before it did not come within the meaning of the phrase "railway common carriers" as used in the act of July 28, 1916, covering steam railroad mail service. The rates of mail pay received by interurban electric carriers for the transportation of mail matter were determined by the Commission in the above cited case, and in *Electric Railway Mail Pay,* 98 I. C. C. 737, and are substantially lower than the rates established for steam railroad carriers.

We are now down to the year 1920, and the Congress in that year passed the Transportation Act, which, among other things, amended the Interstate Commerce Act, as well as provided for the termination of federal control and the establishment of the Railway Labor Board. Twenty years of development and history were before the Congress at this time. Census reports, statutory enactments, decisions of the Interstate Commerce Commission, Court decisions, and common experience and general usage all contributed to the ultimate classification given to electric railways in the Transportation Act, 1920. It is a fact that numerous interurban electric railways prior to 1920 were heavy freight-carrying railroads and had through routes and joint rates and tariffs in large numbers with

steam railroads all over the United States. Congress and the courts and the commissions and the general public all were familiar with interurban electric railroads and dealt with them as a class at this time. So, then, in 1920, when the Transportation Act was passed, the classifications of street, suburban and interurban electric railways had been well settled over a period of twenty years, and the meaning of the term "interurban electric railway" was unambiguous and definite.

By Common Consent and Contemporaneous Construction of Both the Federal and State Authorities, Appellee Has Been Described and Treated as an Interurban Electric Railway.

The appellee has been treated as an interurban electric railway by the regulating commissions of Wisconsin and Illinois for more than 20 years. Those Commissions have assumed jurisdiction over the securities issued by appellee both before and since March 1, 1920, when the Transportation Act was passed. These acts of these state agencies are acts to which full faith and credit should be given under the Constitution and which under the doctrine of comity are entitled to the highest respect. *Cooper v. Newell*, 173 U. S. 555; *Wisconsin v. Pelican Insurance Co.*, 127 U. S. 265.

More than $39,000,000 in securities have been issued by the appellee since 1920 under the authority and approval of the regulating commissions of Wisconsin and Illinois and with the knowledge and tacit sanction of the Interstate Commerce Commission. The form of annual report prescribed by that Commission for use by electric railroads requires a rather complete description of the business of such railroads. In the annual reports of appellee to that Commission since 1920 it has shown the character and the par value of securities issued each year under the authority of the state regulating commissions of Wisconsin and Illinois. In its annual report for one of these years appellee,

through inadvertence, failed to show that certain securities were issued under authority of the regulating commissions of Wisconsin and Illinois. An official of the Interstate Commerce Commission called appellee's attention to this omission and asked to be advised of the authority under which these securities therein listed were issued. The appellee responded to this inquiry by advising that the securities were issued under state authority, which satisfied the inquiry.

On two occasions since 1920 the appellee has been advised by a director of one of the bureaus of the Commission that it need not file returns in response to an order of the Commission entered under section 15a unless and until advised to the contrary. The appellee has not been advised to the contrary. (R. 24, 25)

In *Intrastate Fares of the Chicago North Shore & Milwaukee R. R. Within Illinois*, 62 I. C. C. 188, and in *Intrastate Fares of the Chicago North Shore & Milwaukee R. R. in Illinois and Wisconsin*, 136 I. C. C. 165, the Interstate Commerce Commission described the appellee as an interurban electric railway. These cases arose on applications of the appellee under section 13 of the Act which authorizes "any carrier concerned" without other qualifications to file a petition with the Commission involving its power to remove unjust discrimination against interstate commerce. In the first of these cases the State of Illinois through its Attorney General seriously contended that the appellee was a street railway and on that account was without authority to file a petition with the Interstate Commerce Commission under section 13. This contention was overruled by the Commission, which held that the appellee was a carrier by railroad as that term is used in section 13 and certain other provisions of the Act.

Commencing with the year 1921 in its Thirty-Fifth Annual Report, the Commission has pointed out to Congress that some difficulty had arisen in the construction of sec-

tion 20a, in its application to electric lines, and said that it had no jurisdiction over the issuance of securities of street, suburban or interurban electric railroads which were not operated as a part of a general steam railroad system of transportation, whereas an independently operated interurban electric railroad if engaged in the general transportation of freight is subject to section 15a.

In its annual report to Congress for the year 1921 the Commission said:

> "We have no jurisdiction over the issuance of securities of a 'street, suburban, or interurban electric railway' which is not operated as a part of a general steam railroad system of transportation"

and in that report the Commission also said that certain electric railroads independently operated are engaged in the transportation of freight in interstate commerce in addition to the transportation of passengers. In its annual report for the year 1929 the Commission made the following comment and recommendation:

> "In our annual report to the Congress for various years since the enactment of the amendments of 1920, we have recommended that section 20a, relating to the issuance of securities, *be so amended as to apply to electric railway companies engaged in the general transportation of freight.*"

In the same annual report the Commission concluded its discussion of this question by recommending that the provisions of section 1 (22), section 15a (1), and section 20a (1), applicable to electric railways

> "be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways and participate in through interstate freight rates with such carriers."

These statements and recommendations repeated in the annual reports of the Commission to Congress since 1921 constitute a contemporaneous construction of section 20a which accords with the construction relied upon by the appellee and is an admission by the tribunal charged with the administration of section 20a that independently operated electric lines which interchange standard freight equipment with steam railroads and which participate in through interstate freight rates with such railroads and are engaged in the general transportation of freight are not subject to section 20a.

In *Proposed Acquisition of Cincinnati Hamilton & Dayton Rwy. Co.*, 154 I. C. C. 603, the Commission held that the electric line there before it, which operated between Cincinnati and Toledo via Dayton, Springfield and other points in Ohio with aggregate trackage exceeding that of the appellee, was an interurban electric railway not subject to section 1 (22) or section 20a. This carrier engaged in freight business to a much larger extent than does the appellee. In other cases the Commission made similar findings as to other carriers whose characteristics are substantially the same as the appellee.

In *Wallower v. United States*, 32 Fed. (2) 524, the three judge court held that the Southwest Missouri Railroad, an electric line the principal traffic of which was freight, was an interurban electric railway not subject to section 1 (22) of the Interstate Commerce Act.

The contemporaneous construction given section 20a by the Commission over a period of 12 years is entitled to great weight. *United States v. Minnesota*, 270 U. S. 181; *Logan v. Davis*, 233 U. S. 613.

In *Maynard v. Elliott*, 283 U. S. 273, in commenting on the construction of a statute by courts and by the public over a long period of time, and where the Circuit Court of Appeals had given a different construction of far-reaching and serious results, this Court in adhering to the long-established construction said

> "Only compelling language in the statute itself would warrant the rejection of a construction so long and so generally accepted, especially where overturning the established practice would have such far reaching consequence as in the present instance."

In the instant case the construction of the statute applied by the regulatory commissions of Wisconsin and Illinois and by the Interstate Commerce Commission is the construction given the statute by the entire electric railway industry, by bankers, by investment companies, by the general public and others who have dealt in the securities of electric railways. Should that construction be rejected by the Court in this case its action would have far reaching consequences of a very serious character, and the result would be injurious to the appellee.

In Enacting the Legislation of 1920 Congress Knew that Interurban Electric Railways Would be Subject to all the Provisions Thereof Unless Specifically Excluded. Therefore It Excluded Such Railroads From Certain of the New Provisions Because They Were Not Within the Purpose Served or the Mischief Sought to be Corrected.

As prior to and since the decision of this Court in the *Omaha & Council Bluffs Street Railway case*, 230 U. S. 324, made in June, 1913, interurban electric railroads as distinguished from street railroads have been held to be subject to the Interstate Commerce Act, Congress knew in enacting the comprehensive legislation of 1920 that that class of electric lines would be subject to all of the provisions thereof that relate to common carriers by railroad unless specifically excluded.

As a matter of fact the language of the original House Bill, H. R. 10453, from which the Transportation Act of 1920 ensued contained the following language relating to the issuance of securities by carriers:

> "That from and after one hundred and twenty days after this section takes effect it shall be unlawful for any common carrier by railroad (except a street or electric *interurban passenger railway not engaged in the general business of transporting freight* in addition to its passenger and express business) which is subject to this Act (hereinafter in this section called 'carrier') to issue any * * * securities * * *."

The House of Representatives adopted the foregoing language, with a slight amendment pertaining to corporations organized to engage in transportation and passed the bill and sent it to conference.

It will thus be noted that the original intention was to include within the jurisdiction of the Interstate Commerce Commission control over the issuance of securities by freight carrying electric interurban railways and to exclude only "electric interurban passenger railways."

However, section 20a as finally enacted by Congress affirmatively eliminated all reference to the inclusion of freight carrying interurban electric railroads and this was done despite the fact that the bill as originally passed by the House as above quoted contained direct reference to such railways. Moreover, the Transportation Act as finally passed contained in section 15a and in other sections specific mention of freight carrying electric interurban railways.

The legal history of the meaning of the phrase "interurban electric railway" demonstrates that they did not fall within the purpose sought to be reached by the new legislation or the mischief sought to be corrected. On that account Congress excluded that class of railroad from certain of the amendments by adopting language which had the sanction of time and common usage.

In giving the Commission control over the issuance of securities, Congress was thinking in terms of steam railroads. There can be no question about that. It was well known at the time that investigations by the Commission of the financial affairs of certain important trunk lines had

disclosed conditions which were deemed to be contrary to the public interest. *Financial Investigation New York, New Haven & Hartford,* 31 I. C. C. 32; *St. Louis & San Francisco Railroad Investigation,* 29 I. C. C. 139; *Pere Marquette & C. H. & D. Rwy. Co. Investigation,* 44 I. C. C. 1. It was also well known that many, if not most, trunk line steam railroads operated through several states and that the exercise of authority by several states over the issuance of securities of such carriers was not only cumbersome and expensive but was inadequate and resulted in delay, uncertainty and a total absence of uniform treatment. It will thus be seen that the reason for federal control over the securities of steam railroads did not exist as to independently operated electric railroads. Before the Interstate Commerce Commission was given control over securities, railroads like the Santa Fe, for example, might be obliged to obtain the approval of the regulating tribunals of nine states each time they issued securities. The situation with respect to interurban electric railroads was and is entirely different. Most of them, like the appellee, perform an interurban or intercity service consisting principally of passenger traffic and as to them the state authority over securities is both efficient and adequate.

During the past twelve years since the enactment of section 20a, the Commission has apparently accepted this view, because until this suit was instituted by the government at its request the official and unofficial acts of the Commission were in accordance with it.

Appellee is Clearly Distinguishable From the Piedmont & Northern Railway.

The physical and traffic characteristics of the appellee clearly distinguish it from the Piedmont & Northern Railway which was before the Court in *Piedmont & Northern Rwy. Co. v. I. C. C.,* 286 U. S. 299, where the Court con-

strued the meaning of paragraphs 18 to 22, of section 1 of the Interstate Commerce Act which have to do with the extension and abandonment of lines of railroad. On the facts of that case, the Court held that the Piedmont & Northern is not an interurban electric railway as that phrase is used in section 1. The Court did not lay down any general rule as to what constitutes an interurban electric railway within the meaning of section 1 or other sections of the law. After making certain observations to the effect that the phrase "interurban electric railway" was not in 1920 commonly used to designate a carrier whose major activity was the transportation of interstate freight in trains of standard freight cars, and that the business of the Piedmont & Northern is preeminently interchange interstate freight of national character in all essential respects conducted as the business of steam freight carriers in the territory served, the Court concluded that the Piedmont & Northern, which fitted that description, is not an interurban electric railway.

The Court also pointed out that prior to 1920 street and suburban electric railways had grown in many instances so as to link distant communities; that the interurban lines were constructed to serve two or more cities; that the characteristics of street or suburban railways persisted in these interurban lines; that they were chiefly devoted to passenger traffic and operated single or series self-propelled cars; and that many of them carried package freight and mail and some carried carload freight. The history, the physical, and the traffic characteristics of the appellee fit that description to a nicety.

The distinction between the appellee and the Piedmont & Northern is at once apparent when the physical and traffic characteristics of each are contrasted.

In 1929 the freight revenues of the Piedmont & Northern were 94.5 per cent of its total revenues while the freight revenues of appellee were 22 per cent of its total revenues.

The passenger revenues of the Piedmont & Northern were 2.9 per cent of its total revenues while the passenger revenues of the appellee were 78 per cent of its total revenues.

Of the freight revenues of the Piedmont & Northern 95.7 per cent consisted of interchange freight with steam railroads while the interchange freight revenues of the appellee were 34.74 per cent of its total freight revenues (R. 35) and included in that percentage are revenues from freight interchanged with other electric lines as well as steam railroads.

The revenues from local freight of the Piedmont & Northern were 4.3 per cent of its total freight revenues while the revenues from local freight of the appellee were 65.26 per cent of its total freight revenues.

The interchange freight revenues of the Piedmont & Northern were 90 per cent of its total revenues while the revenues from interchange freight of the appellee were 8.47 per cent of its total revenues. In 1928 Class 1 steam railroads derived more than 65.14 per cent of their total revenues from the transportation of interchange freight. (R. 60, 61)

The Piedmont & Northern interchanged with steam railroads an average of 6,000 carloads of freight per month, while the appellee interchanged with steam railroads an average of about 1900 carloads of freight per month (R. 37). Translated into an average daily movement, this means for the appellee less than 32 cars received and 32 cars delivered each day.

The revenues of the appellee from carload freight were 8.63 per cent of its total revenues while the revenues of the Piedmont & Northern from carload freight constituted the major part of its total revenues.

Of the total miles of track of the Piedmont & Northern, only 2.9 miles are located in city streets while approx-

imately 40 miles of the track of appellee are located in city streets. The Piedmont & Northern has 2.25 per cent of its total miles of track located in city streets while the appellee has 14.66 per cent of its total *route* miles of track in city streets.

The Piedmont & Northern handles standard freight equipment over substantially every mile of its track, while on 31.47 route miles of appellee's track, which is 22.73 per cent of its total route mileage, it is impossible to handle carload freight in standard railroad freight equipment. Appellee cannot handle standard railroad equipment in either its Milwaukee or Chicago terminals.

The Piedmont & Northern owns 17 electric locomotives weighing from 55 to 100 tons each, while the appellee owns but 7 electric locomotives, the heaviest of which is 70 tons, and two of which are operated by electric storage batteries.

The maximum grades on the Piedmont & Northern are 1 per cent and are compensated for curvature while there are maximum grades up to 7 per cent on the main line tracks of the appellee.

The Piedmont & Northern owns 287 freight cars, all of which are interchanged with steam railroads, while the appellee owns 206 freight cars only 114 of which can be interchanged with steam railroads.

The Piedmont & Northern operates a freight yard as a joint facility with two steam railroads, while the appellee has no joint facility operations with any steam railroad.

The Piedmont & Northern maintains a regular Pullman schedule in connection with the Seaboard Air Line, a steam railroad, while the appellee operates no through passenger service of any kind with any steam railroad. None of its passenger equipment is interchanged with steam railroads; and it would be physically impossible to handle standard steam railroad equipment either passenger or freight into either of appellee's terminals at Chicago or Milwaukee.

The appellee is an associate member of the American

Note: Data as to Piedmont & Northern from *Piedmont & Northern v. U. S.*, 286 U. S. 299 and *Construction Piedmont & Northern*, 138 I. C. C. 363.

Railway Association and a member of certain other associations which are maintained largely by steam railroads. Membership in these organizations is necessary or desirable in the case of an interurban electric railway if it has any interchange connections with steam railroads.

By powers of attorney filed with the Commission the appellee concurs in numerous freight tariffs with steam and electric railroads similar to those maintained by other interurban electric railroads and steam railroads which do an interline business. The participation by the appellee in interline tariffs is substantially the same as the participation by the Spokane and Inland Empire Railroad in 1911, which this Court described as an interurban electric railroad, and the same as the participation by numerous other interurban electric railroads at the time of the passage of the Transportation Act. The regulations of the Commission require that a carrier which seeks to participate in interline traffic under joint rates must file powers of attorney with it whether or not that carrier actually handles interline business. This character of participation in joint rates facilitates the handling of interline business and it is customary for all railroads which have any interline business to concur in the general tariffs published by certain publishing agents of the steam railroads.

Membership in the associations referred to and concurrence in the interline tariffs lose their significance so far as the appellee is concerned when consideration is given to the fact that less than 2 per cent of its passenger revenues are from interline passenger business and 8.47 per cent of its total revenues are from interline freight.

Aside from these distinguishing contrasts in the physical and traffic characteristics of the appellee and the Piedmont & Northern, the appellee has other distinctive characteristics. It is predominately an interurban or intercity passenger line. It operates interurban and suburban passenger service at frequent intervals between Chicago, Mil-

waukee and intermediate towns and villages. The characteristics of the Bluff City Street Car Line, out of which it developed, have persisted. Its passenger trains and its merchandise dispatch trains between Chicago, Milwaukee and intermediate points are operated in single or series self propelled cars. These trains operate over the elevated structure in Chicago in common with the Chicago Rapid Transit Company, which performs an intramural service within Chicago a distance of 24 miles and such operation is subordinate to the operation of the Chicago Rapid Transit Company and is under the train rules of that company. In Waukegan appellee owns and operates the street car system and has transfer arrangements between the street cars and its interurban service. In Milwaukee the appellee operates over the street car tracks of the Chicago and Milwaukee Electric Railroad, which it owns a distance of about three miles. Appellee handles a comparatively limited number of commodities. Of the 157 commodities listed in the Commission's commodity classification, there are 56 commodities which during the years 1929 and 1930 appellee did not handle. Appellee handles practically no grain, no live stock, no packing house products, no poultry or eggs. It has no grain elevators or stock yards on its line.

The appellee is restricted and handicapped in its operation of freight service on its line of railroad both by physical conditions and franchise requirements under which it operates over city streets in many towns and villages. For example, appellee operates in 14 towns under franchise rights. In all but two of such towns the franchise requires the use of electric power; in all but three towns steam operation is prohibited; in five safety stops are required; in eight appellee must pave the streets; in seven appellee must stop at street intersections; in nine appellee must remove snow; in two appellee must sprinkle the streets; in six freight operation is prohibited; and in five appellee must carry policemen and firemen free of charge. It should be

emphasized that more than 60 per cent of the total freight revenues of the appellee is derived from less than carload merchandise carried in the merchandise dispatch service performed in self-propelled baggage type cars, some of which are trailers. This business is local to appellee's line. Less than 10 per cent of its total revenues comes from local carload business, and from all freight business interchanged with both steam and electric railroads.

In Piedmont & Northern Case the Court Established no Precedent Which Controls Disposition of This Case.

In the *Piedmont & Northern case* the Court appears to have disposed of the question there presented largely on the facts. It held that the Piedmont & Northern is not an interurban electric railway within the meaning of that phrase as used in section 1 (18-22) of the Interstate Commerce Act. Appellant argues that the principle to be deduced from the decision in the *Piedmont & Northern case* is that when the volume of a carrier's interstate business is such as to constitute it an important competitor on substantially equal terms with an interstate steam railroad it falls within the class of carriers "long recognized as objects of national concern and regulation," and as such it would cease to be a street, suburban or interurban electric railroad. We are sure that in the *Piedmont & Northern case* the Court did not intend to lay down any such rule of interpretation. Upon reflection it is at once apparent that if the fact that an electric line is an important competitor of a steam railroad brings it within the class of carriers "long recognized as objects of national concern and regulation" it would follow from that premise that water carriers, motor trucks and busses, which are important and troublesome competitors of steam railroads, would on that account be objects of national concern and regulation. Up to this time trucks, busses and water carriers have not been

objects of national concern and regulation. The appellee competes with motor trucks, busses and water carriers as do most steam railroads.

Appellant states that a carrier does not have to be predominately a freight carrier in order to be a substantial factor in the business of transporting interstate commerce. It then refers to the fact that the gross operating annual revenues of appellee, in particular years, were about $7,000,000, and that the gross operating annual revenues of the Piedmont & Northern were about $2,500,000 apparently for the purpose of suggesting that because the gross revenues of appellee were substantial it is an object of national concern and regulation. In support of this argument appellant cites facts with respect to the Long Island Railroad, not of record, which show that in 1928 that railroad received most of its revenue from passenger traffic. This statement is based on the report of the Commission in *Long Island R. R. Co. Abandonment*, 162 I. C. C. 363. That report shows that the figures used are partly estimates, and that 75 to 80 per cent of the freight traffic of the Long Island was interstate commerce, which means that it was interchanged with other railroads.

It is perfectly obvious that the fact that the gross revenues of appellee in 1929 were substantial and were greater than the gross revenue of the Piedmont & Northern does not support the argument that that makes the appellee an object of national concern and regulation. Poors Manual for 1932 shows that the gross revenue during the year 1929 of the Chicago Rapid Transit Company, which performs a local street car service over the elevated structure in Chicago, was over $21,000,000; that the gross revenue of the Chicago Surface Lines was over $62,000,000; that the gross revenue of the United Railways and Electric Company of Baltimore, performing a street car service was over $16,000,000; that the gross revenue of the St. Louis Public Service Company, a street car system in St. Louis, was over

$19,000,000; and that the gross revenue of the Boston Elevated Railway Company an urban street car system was over $34,000,000. If appellant's argument is sound, these and other street car systems throughout the country which have annual earnings substantially greater than the appellee would also be objects of national concern and regulation. But they are not. This argument falls of its own weight. Appellant is indeed put to extreme lengths to be compelled to resort to it.

That appellee has not been treated by agencies of the federal government as an object of national concern and regulation is apparent from the fact that although the Valuation Act was passed in 1913 and the Commission has made tentative valuations of every steam railroad in the United States, irrespective of size, it has not yet valued the appellee. The appellee has not been an object of national concern as to that question. When in 1920 in *Increased Rates, 1920,* 58 I. C. C. 220, the Commission authorized a general increase in freight and passenger rates, of steam railroads, and prescribed rate groups, it did not include the property of the appellee or other independent electric lines in the valuation used in that case as a means of determining the rate base. Again, in 1922 in *Reduced Rates, 1922,* 68 I. C. C. 676, where the Commission required steam railroads to reduce freight rates approximately 10 per cent and fixed the value of steam railway property as a means of determining the fair return, it did not include the appellee in that value.

In the recent *Fifteen Per Cent Case,* 179 I. C. C. 215 the Commission gave no concern to the value of the appellee or other electric railways. In these three important nation-wide investigations the appellee has not been an object of national concern.

The appellee and other independently operated electric lines were not regarded as objects of national concern in the legislation of Congress dealing with *Railway Mail Pay,*

39 Stat. L. 412, enacted in 1916, and 40 Stat. L. 748, enacted in July, 1918. The Act of 1916 authorized the Commission to fix and determine reasonable rates and compensation for the transportation of mail matter by "railway common carriers". This phrase is certainly broad enough to include all common carriers by railroad, but in *Electric Railway Mail Pay*, 58 I. C. C. 455, certain electric lines appeared before the Commission and sought the benefit of the higher rates of mail pay established by the Commission for steam railroads, the Commission rejected their plea and held that these electric lines were "urban and interurban electric railroads" within the statute of July, 1918, which authorized the Commission to fix rates for the transportation of mail matter by urban and interurban electric common carriers. Thereafter the Commission proceeded to fix lower rates for the transportation of mail matter by electric carriers under the statute of July, 1918, *Electric Railway Mail Pay*, 98 I. C. C. 737. Electric railways were not considered as objects of national concern in these matters.

In its report in *Consolidation of Railroads*, 159 I. C. C. 522, where the Commission adopted a plan for consolidating railroad properties under section 5 of the Interstate Commerce Act, it did not treat appellee or other independent electric lines as objects of national concern by including them in the plan, and this despite the fact that the consolidation provisions of the Act, unlike section 20a, apply to all carriers by railroad.

Appellee is Not a Carrier or Corporation as Those Terms are Used in Section 20a.

In its specification of errors but not elsewhere in its brief the appellant casually suggests that the appellee is subject to section 20a by virtue of that part of paragraph 1 thereof following the parenthetical exception which reads

> "or any corporation organized for the purpose of engaging in transportation by railroad subject to this act".

If the Government's contention is correct in this particular, Congress did a vain and futile thing in attempting to exclude independently operated street, suburban and interurban electric railroads from the provisions of Section 20a. All of the securities that have been issued by appellee were issued after it acquired the property and began the operation thereof as an interurban electric common carrier. The fact that it was incorporated under the General Railroad Law of Illinois with charter powers to conduct a railroad business is beside the point.

As was held by the Court of Appeals of Maryland in dealing with the meaning of Section 20a in *Whitman v. Northern Central Rwy.*, 127 Atl. 113, where the Court referred to the meaning of the word "organized" as used in Section 20a

> "obviously it means more than mere incorporation, and contemplates that the corporation shall have taken such steps as were necessary to enable it to engage in interstate commerce whether it actually did so engage or not."

The obvious meaning of the phrase "or any corporation organized for the purpose of engaging in transportation by railroad subject to this Act" is to give the Commission control over the security issues of a corporation organized to engage in transportation by railroad subject to this Act, before it actually engages as a carrier in such transportation, so that such a corporation could not, prior thereto, issue securities without the authority of the Commission for possible use later in building the railroad and thereby circumvent the intent of Congress. Were it not for that clause, any corporation organized to engage in transportation by railroad could issue securities without the approval

of the Commission before it actually engaged in such transportation and make such use of the securities, if later it actually engaged as a common carrier in transportation, as it saw fit to make.

This is the only logical and reasonable interpretation that can be given this clause, because, as already observed, otherwise the parenthetical exception in respect to street, suburban and interurban electric railroads would have no effect whatever. Many, if not most, interurban electric railroads are incorporated under general railroad laws. This record shows that the Chicago Rapid Transit Company, which performs the intramural urban service over the elevated structure in Chicago was organized under the General Railroad Law of Illinois and, by its charter, has the same powers granted the respondent and the same powers that would be granted any railroad organized under those laws. If the position of the Government is sound on this point, the Chicago Rapid Transit Company is subject to the jurisdiction of the Interstate Commerce Commission in respect to the issuance of securities.

Since 1920 Appellee has Issued Securities Aggregating $39,000,000 Under State Authority and Without the Authority but With the Knowledge and Tacit Sanction of the Interstate Commerce Commission. Aside From the Facts and the Legal Meaning of the Statute, Equity Requires That Decree of Court Below be Affirmed.

Paragraph 11 of section 20a provides that any security issued or any obligation assumed by a carrier subject to that section without the authority of the Interstate Commerce Commission shall be void, and that any such void security acquired by any person for value, in good faith and without notice that it is void, entitles such person to hold the carrier and its directors, officers and attorneys, jointly and severally liable for the full amount of damages sustained in a suit in any court of competent jurisdiction.

There are now pending in the United States District Court for the Northern District of Illinois fifteen suits against the appellee, its directors, officers and attorneys for alleged damages aggregating $325,000. These suits were filed since the stock market crash in the fall of 1929 by purchasers of securities of the appellee and they are grounded on the theory that the plaintiffs are entitled to damages because the securities, having been issued without the authority of the Commission, are void.

As already pointed out, since 1920 the appellee has issued securities in good faith aggregating in par value about $39,000,000. These securities were issued under authority of the regulating commissions of Wisconsin and Illinois and without the authority but with the knowledge and tacit sanction of the Interstate Commerce Commission. Other electric lines similarly situated have issued securities since 1920 aggregating more than $239,000,000, under state authority and without the approval of the Interstate Commerce Commission.

In these circumstances the language of the statute would have to be compelling indeed to cause this Court to disregard the equities of this case and to disregard the established practice of the appellee and the entire electric railway industry, the regulating authorities of all of the states, and the construction given the statute by the Interstate Commerce Commission, which would have to be done if the contentions of appellant be sustained. *Maynard v. Elliott, supra.*

Unlike the *Piedmont & Northern case* the equities of this case are overwhelmingly with appellee. Under the doctrine of relative convenience and injury all doubts in this case should be resolved in favor of appellee. *Montana Copper Company v. United States,* 142 Fed. 625, Sec. 64, 32 Corpus Juris 77. This doctrine is especially applicable in this instance because the reversal of the decree of the lower court will cause great injury to appellee and will confer no benefit upon appellant.

In the *Piedmont & Northern case* the carrier sought to extend its line into a territory already adequately served by steam railroads. The Commission had asserted jurisdiction and had found that the public convenience and necessity did not require the extension. Therefore, what the Piedmont & Northern attempted to do in that case was contrary to the spirit of the amendments to the law of 1920 as expressed by this Court in numerous cases. On the other hand, in the instant case the decree of the court below in no way defeats the purpose of section 20a but is in accord with the plain intent of Congress to exclude from that provision a class of carriers which would otherwise have been included, as this class did not come within the aims of Congress.

Even though the Interstate Commerce Commission, at whose instance this suit was instituted, may believe in the light of its later experience that interurban electric railways which interchange freight in standard equipment and which maintain interline freight rates with steam railroads should in the public interest be included within the provisions of section 20a, there can be no reasonable ground, particularly after its repeated recommendations to Congress and the latter's refusal to act, to apply to the courts for an enlargement of the purpose of the statute. There is no equity and can be no equity in such an effort. If the Commission, as its recommendations to Congress indicate, now believes that section 20a should be amended so as to bring within its scope interurban electric railways which interchange freight with steam railroads in standard freight equipment and which maintain interline freight rates with such railroads, it should continue to look to Congress for such legislation. Statutes cannot be extended by construction to cover *casus omissus*.

While it is not necessary to argue that the particular purpose of section 1 (18-22) of the Interstate Commerce Act construed in the *Piedmont & Northern case* is not the

same as the purpose of section 20a, it is settled that the same phrase may have a different meaning in different connections in the same Act. In the *Piedmont case,* the Court answered some of the contentions of the Piedmont as to the significance of the similarity of phraseology as to electric lines in other sections of the Act by this observation: "But it is so used with other purposes in view." *American Security Co. v. District of Columbia,* 224 U. S. 491, 494; *Alabama Midland Rwy. Co. v. I. C. C.,* 168 U. S. 144. Compare *Wight v. United States,* 167 U. S. 512. In the *Piedmont & Northern case* the Court laid down no rule as to the meaning of the statute there involved. Although it appears that the general objective of section 1 (18-22) and section 20a is the same in scope, yet the particular purpose of these sections is different.

While the prayer of the bill which instituted this suit seeks only an injunction against future issues of securities, allegations are made in the bill that since March 1, 1920, appellee and its predecessor have been subject to the jurisdiction of section 20a and have issued securities aggregating about $39,000,000 without the approval of the Interstate Commerce Commission and that these acts of the appellee violate section 20a. It will thus be seen that a reversal of the decree of the court below will result in great injury to the appellee for even though a decree should be entered limited to enjoining the appellee from the future issue of securities without the approval of the Commission, nevertheless the stigma of doubt would attach to $39,000,000 of securities issued by the carrier prior to the decree and subsequent to March 1, 1920.

It is clear that on the facts and the law, the appellee is an interurban electric railway which falls within the exception in section 20a. It is equally clear that the contentions of the appellant cannot be sustained without doing violence to the equities, which as stated are overwhelmingly with appellee. If appellant's theory of the law be sustained the effect will be to make void the securities

of appellee and of other electric lines, the result of which may be a plethora of law suits for damages which staggers the imagination. In addition, should the Court adopt appellant's theory of the law and hold that the appellee is not an interurban electric railway, such a finding will raise for the appellee and for the whole electric railway industry a fog of uncertainty as to classification and jurisdiction which will make it impossible for any electric railway to know in advance of a decision by this Court what its status is under section 20a, and such a finding will work untold injury to appellee and to the entire electric railway industry.

CONCLUSION.

For the reasons stated the decree of the court below should be affirmed.

Respectfully submitted,

RALPH R. BRADLEY,
CLAUDE D. CASS,
ROBERT E. QUIRK,
Solicitors for Appellee.

December 9, 1932.

"Section 20a (1) That as used in this section the term 'carrier' means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this Act, or any corporation organized for the purpose of engaging in transportation by railroad subject to this act."

"Section 20a. (2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed 'securities') or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

* * * * * * * * * *

"Sec. 20a. (11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any

term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court." (C. 91, 41 Stat. 494-496; U. S. C. Title 49, Sec. 20a.)

SUPREME COURT OF THE UNITED STATES.

No. 264.—October Term, 1932.

United States of America, Appellant, *vs.* Chicago, North Shore and Milwaukee Railroad Company.	Appeal from the District Court of the United States for the Northern District of Illinois.

[January 9, 1933.]

Mr. Justice Roberts delivered the opinion of the Court.

This is a suit brought pursuant to Section 12 (1) of the Interstate Commerce Act, as amended,[1] to enjoin the appellee from issuing any securities or assuming any obligation or liability in respect of the securities of others without first having obtained an order from the Interstate Commerce Commission authorizing such action, as required by Section 20a of the Act.[2] The petition avers appellee's intention to issue or become guarantor of securities in violation of the last mentioned section.

The District Court, after making detailed and elaborate fact findings, concluded as matter of law that the railroad was an independently operated electric interurban railway expressly excepted from the requirements of the section. The question is whether the facts found warrant the decision.

Section 20a forbids a carrier to issue shares, bonds or obligations, evidence of interest or indebtedness, or to assume any obligation or liability of any other person or corporation, unless the Commission, upon application, after investigation, shall by order authorize such issue or assumption, as within the applicant's corporate purpose and compatible with the public interest. After prescribing the procedure before the Commission, and declaring its jurisdiction plenary and exclusive, the section enacts that securities or obligations not issued pursuant to its terms shall be void, and imposes civil and criminal liability upon officers and directors participating in their creation.

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[1]U. S. Code, Tit. 49, § 12 (1).

[2]U. S. Code, Tit. 49, § 20a.

Paragraph 1 provides: "As used in this section the term 'carrier' means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) . . . ."

The properties of the appellee have developed, through various transfers and reorganizations, out of a street railway company organized more than twenty-five years ago. The company has for some years owned and operated in interstate commerce an electrified railroad, the main line of which extends from Chicago, Illinois, to Milwaukee, Wisconsin. There are 138 route miles of line, 132 miles of second track and 42 miles of yard and other track. About 40 miles of main and second track are in city streets, on some of which the appellee operates in common with street cars and vehicular traffic. In addition to the main line between Chicago and Milwaukee there is an alternate line for part of the distance; a branch some 36 miles in length; and two other branches, one of which is 3 and the other 8 miles long. Operation in Chicago is over the elevated tracks of the Chicago Rapid Transit Company from the south side northerly through the loop district to a point on the north side (approximately 16 miles). Thence the line runs northerly through Chicago and Evanston to Wilmette, approximately 8 miles, over elevated dirt fill tracks owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, leased by the appellee jointly with the Chicago Rapid Transit Company. The remainder of the appellee's lines are upon its own right of way, or in streets the use of which is granted by local franchise. The total laid under local franchises, outside of Milwaukee, is approximately 3 miles; in the latter city the operation for 2.67 miles is over the tracks of a street surface railway owned by the appellee.

Twenty fast through passenger trains are operated daily in each direction between downtown Chicago and downtown Milwaukee with a running time equalling that of the fastest trains of the Chicago and Northwestern Railway, which operates fifteen through trains daily between the same cities. Dining cars and parlor cars are included in some of the appellee's fast trains. Modern, well equipped passenger stations are maintained at a number of points; 51 have agents selling passenger tickets; at some 96 places shelters and platforms are maintained, at 35 platforms only; and at 42 locations at which certain trains stop at streets or highways no

facilities are provided. Through railroad and Pullman tickets are sold to any part of the United States, Canada or Mexico. Local passenger fares are computed on the mileage basis used by steam railroads.

Appellee's tracks are of standard gauge and are physically connected with those of four steam railroads at some thirteen points, and with those of three electric lines. Eight connections are used for handling interchange carload freight. The railroad has substantial facilities for serving various industries located on its lines, such as side, industrial, team and switch tracks, and freight classification tracks. It owns seven electric locomotives which are of a small type and unable to haul freight trains of the size usually employed by steam railroads, and 114 freight cars which have no electrical equipment and are interchangeable with steam railroads. Sixteen local freight tariffs are published; in 206 tariffs the railroad participates as initial carrier, and in more than 800 as a delivering or intermediate carrier, in conjunction with steam railroads.

The total transportation revenue in 1930 was over $6,000,000, about 76% from passenger traffic and about 22% from freight. This ratio has been substantially maintained for some years. In 1930, 87% of carload freight traffic was interchange and 78% of all freight traffic was interline, but only 42% of freight revenue was derived from interline business.

Locomotives are not employed in the passenger service, the cars having installed electrical equipment, and being somewhat shorter and narrower than standard passenger railroad coaches. Freight is hauled by electric locomotives. A merchandise package delivery freight service is supplied by cars similar to baggage cars used on steam railroads, having self contained electric equipment, operated from the loop in Chicago to Milwaukee in trains of from one to five cars. At certain points gantlet tracks are required for handling freight cars, as the clearances on the main line are insufficient to permit their passage. Grades are much heavier than those customary on steam railroads, and some of the curves are of so short a radius as not to permit the passage of a steam locomotive. The company maintains no facilities for receipt or delivery of carload freight at its terminii in Chicago and Milwaukee, and cannot accomplish interchange of such freight at either, connections for this purpose being outside those cities.

The railroad was constructed to afford a fast electric passenger service between Chicago and Milwaukee and suburban passenger service into and out of Chicago. The freight business is subsidiary to this primary function, and is not fairly comparable to that ordinarily transacted by a standard steam railroad. Passenger traffic, whether measured by car service or by gross earnings, heavily preponderates over interline freight business. The main terminals serve only the passenger and merchandise freight traffic.

We thus have a typical example of an interurban electric line for passenger service, which has developed, in addition, such freight traffic as could advantageously be undertaken without interfering with performance of the main purpose of the carrier. The facts differentiate the present case from *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Comm.*, 286 U. S. 299. There the railway was predominantly a carrier of interchange carload freight and the proposed extension of line, which was the subject of that litigation, had as its object the creation of a link in a trunk-line route composed of the electric line and a number of steam railroads, which would divert from other steam railroad trunk-line routes some $4,000,000 of revenue annually. The purely local traffic in freight, passengers, baggage and express was there relatively inconsequential; but here greatly preponderates. It was there said: "In cases where an appreciation of the facts is requisite to proper classification it is not always easy to draw the line. Instances may be supposed where great difficulty might be experienced in determining whether an electric railway line falls within or without the exception of paragraph (22) [which is couched in the same words as the exception in Section 20a (1)]. But this is not such a case. The facts clearly require a holding that petitioner's railway is not within the true intent and purpose of the exclusion intended by the paragraph." If the status of the appellee were a matter of first impression, we should, though the decision is not free from difficulty, be inclined to hold section 20a inapplicable. But for the reasons about to be stated, we consider the question settled.

The definitions embodied in Section 1, paragraphs (2) (a) and (3), embrace the appellee and render it subject to the jurisdiction conferred upon the Commission by the remaining sections, unless

excepted by their terms. Interurban electric railways are expressly saved from the requirements of sections 1 (18) to (21) inclusive, 15a and 20a. The language of the excepting clauses in the first and third instances is identical except for the use in one case of the singular and in the other of the plural number. That applicable to 15a, which is the section providing for fixing rates to yield a fair return, and for recapture, differs in substance from the two others and is: "excluding . . . (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation *or engaged in the general transportation of freight*" . . . .

As indicated in the *Piedmont* case, *supra,* the phrase "interurban electric railway" may not in all circumstances be susceptible of exact definition. The Commission has realized the difficulty. In its 35th annual report, for 1921, this was said (p. 21):

"Under the law as it now stands, we have no jurisdiction over the issuance of securities of a 'street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.' Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. The use of electricity as motive power for railways is rapidly increasing. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under Section 15a of the act we are given authority to include in groups of carriers for rate-making purposes such interurban electric lines as are engaged in the general transportation of freight. It seems desirable that Section 20a of the interstate commerce act be so amended as to indicate definitely the classes of electric railway companies subject to that section."

The recommendation was repeated in the annual reports for 1923, 1924 and 1925.[3] In the report for 1928 (p. 83) the following appears:

"That the present exemption provisions of paragraph (22) of section 1, paragraph (1) of section 15a, and paragraph (1) of section 20a, applicable to electric railways, be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways and participate in through interstate freight rates with such carriers; provision to be made for exemption of particular electric railways fall-

[3]Annual Report of Interstate Commerce Commission for 1923, p. 70; Report for 1924, p. 78; Report for 1925, p. 72.

ing within the excepted class, if upon application they are able to show to the satisfaction of the commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned."

See also the 1929 report, p. 89.

The position heretofore taken by the Commission with respect to the appellee is of great significance. In 1923 a brief was filed with the Commission supporting the view that section 15 (a) had no application to the company because it was an interurban electric railway not operated as part of a general steam railroad system of transportation and not engaged in the general transportation of freight. The Director of the Bureau of Finance replied that unless later advised to the contrary the carrier would not be required to file returns under the section. No such advice has ever been communicated to the appellee.

The District Court finds that since July, 1916, when the Chicago, North Shore and Milwaukee Railroad, the immediate predecessor of appellee, acquired the properties, the appellee and its predecessors have issued securities aggregating $71,327,200 par value. Of this total $61,662,600 have been issued since March 1, 1920, the date of the incorporation of section 20a into the Interstate Commerce Act. All of these securities were issued upon the authority and with the approval of the regulating commissions of Wisconsin and Illinois, and of those issued since March 1, 1920, $38,935,608 were outstanding in the hands of the public on April 30, 1931. The required annual reports filed by the appellee with the Commission have shown all securities issued since March 1, 1920, and in compliance with the rules have stated that these issues were each approved by the state commissions.

With this knowledge of the situation the Commission never, until it requested the Attorney General to institute the present suit, by word or act intimated that the procedure followed by the railroad was illegal or the state regulatory bodies without jurisdiction. It would be difficult indeed to conceive a clearer case of uniform administrative construction of Section 20a as applied to this company. Conceding that the proper classification of the railway is not free from difficulty, all doubt is removed by the application of the rule that settled administrative construction is entitled to great weight and should not be overturned except for

cogent reasons. *New York, N. H. & H. R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, 401; *Logan* v. *Davis,* 233 U. S. 613, 627; *Brewster* v. *Gage,* 280 U. S. 327, 336; *Fawcus Machine Co.* v. *United States,* 282 U. S. 375, 378; *Interstate Commerce Comm.* v. *New York, N. H. & H. R. Co.,* — U. S. — (decided November 21, 1932).

The primary responsibility rested upon the Commission to determine whether under the circumstances the railroad was required to procure leave under Section 20a for the issuance of securities. Evidently entertaining serious doubts on this question it has for more than a decade resolved them in favor of the carrier, and the company and its officers have acted in reliance on the administrative tribunal's construction of the statute. At this late day the courts ought not to uphold an application of the law contradictory of this settled administrative interpretation.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.